No. 20-_____

In the Supreme Court of the United States

STATE OF LOUISIANA,
Petitioner

v.

AARON HAUSER,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Louisiana

APPENDIX

302 So.3d 514 (Mem)
Supreme Court of Louisiana.

STATE of Louisiana
v.
Aaron G. HAUSER

No. 2020-K-00429
|
10/06/2020

Applying for Rehearing/Reconsideration, Parish of Beauregard, 36th Judicial District Court Number(s) CR-548-1983, Court of Appeal, Third Circuit, Number(s) KA19-341.

Opinion

****1** Application for reconsideration not considered. See Louisiana Supreme Court Rule IX, § 6.

Weimer, J., concurs in the refusal to reconsider and assigns reasons.

Crichton, J., would grant reconsideration and assigns reasons.

Crain, J., concurs for reasons assigned by Justice Weimer.

WEIMER, J., concurs in the refusal to reconsider and assigns reasons.
Although I previously voted to grant the state's writ application in this matter and continue to believe this matter should have been granted and docketed, I am constrained by La. S.Ct. Rule IX, § 6 and La. C.Cr.P. art. 922(D) to not consider this request for reconsideration.

Crichton, J., would grant reconsideration and assigns reasons:
I would grant the State's application for reconsideration in accordance with my vote ***515** to grant and docket the State's original writ application. In my view, this matter highlights the lower courts' need for guidance as to the proper procedures and standards to be applied in juvenile homicide sentencing hearings, as informed by *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Montgomery v. Louisiana*, 577 U.S. ——, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). As I have previously stated, while Supreme Court Rule IX, § 6 prohibits reconsideration of a prior writ denial, an exception to this rule must exist in order to further the interest of justice in certain extraordinary circumstances where good cause is shown. *See also Harris v. Am. Home Assurance Co.*, 2018-589 (La. 8/31/18), 251 So. 3d 397, 398 (Crichton, J., would grant reconsideration); *Marable v. Empire Truck Sales of La., LLC*, 2017-1469 (La. 11/17/17), 230 So.3d 212 (Crichton, J., would grant reconsideration); *State v. Franklin*, 2019-1454 (La. 1/14/20), 286 So. 3d 1039 (mem) (Crichton, J., additionally concurring with grant of reconsideration). Such good cause has been shown here, and I therefore conclude the extraordinary circumstances at hand require that this internal operations rule yield in the interest of justice.

All Citations

302 So.3d 514 (Mem), 2020-00429 (La. 10/6/20)

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297 So.3d 730 (Mem)
Supreme Court of Louisiana.

STATE of Louisiana
v.
Aaron G. HAUSER

No. 2020-K-00429
|
07/02/2020

Applying For Writ of Certiorari, Parish of Beauregard, 36th Judicial District Court Number(s) CR-548-1983, Court of Appeal, Third Circuit, Number(s) KA19-341.

***1** Writ application denied.

Weimer, J., would grant and docket.

Crichton, J., would grant and docket and assigns reasons.

Crain, J., would grant and docket for reasons assigned by Justice Crichton.

Opinion

CRICHTON, J., would grant and docket and assigns reasons:

I would grant and docket the State's writ application to provide the Court an opportunity to set necessary parameters and guidelines concerning the scope of a hearing pursuant to both *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Montgomery v. Louisiana*, 577 U.S. ——, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). The district court in this matter recognized the voluminous evidence of defendant's rehabilitation since his imprisonment but determined that such evidence did not outweigh the heinousness of his crimes, finding the murders of defendant's step-brother and step-mother were not the result of impulsiveness or transient immaturity but were calculated acts of cold-blooded murder. Accordingly, the district court denied defendant parole eligibility for either count of first degree murder. On review the court of appeal found the district court abused its discretion in denying defendant the benefit of parole on both counts of first degree murder, reasoning that the extensive evidence of defendant's rehabilitation demonstrated he was not irreparably corrupt.

In my view, the lower courts require further guidance on both the application of the requirements of La. C.Cr.P. art. 878.1 and the appropriate standard of review to be applied by the appellate courts. *See also* ***2** *State v. Allen*, 18-1042 (La. 11/5/18), 255 So.3d 998 (Crichton, J., would grant and docket) ("[I]n making this determination [as to parole eligibility], a court should focus on the facts of the underlying conviction and defendant's criminal history, if any, as well as the defendant's behavior record during confinement. Education, family background, and issues of family support would also likely prove helpful in the judge's determination."); *see* Scott Crichton & Stuart Kottle, *Appealing Standards: Louisiana's Constitutional Provision Governing Appellate Review of Criminal Facts*, 79 La. L. Rev. 369, 390 (2018) ("Often, the appropriate standard of review is 'manifest abuse of discretion." '). Accordingly, I would

grant and docket this writ application to examine the multiple issues presented and to address proper procedures and standards for sentencing hearings in juvenile homicide cases, as informed by *Miller* and *Montgomery*.

STATE of Louisiana
v.
Aaron G. HAUSER
2019 WL 7491511
Court of Appeal of Louisiana, Third Circuit.
19-341
|
12/30/2019
|
Rehearing Denied February 19, 2020

APPEAL FROM THE THIRTY-SIXTH JUDICIAL DISTRICT COURT, PARISH OF BEAUREGARD, NO. CR-548-1983, HONORABLE C. KERRY ANDERSON, DISTRICT JUDGE

Attorneys and Law Firms

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Jill Pasquarella, Kristin Wenstrom, Hannah Van De Car, Louisiana Center for Children's Rights, 1100-B Milton Street, New Orleans, LA 70122, (504) 658-6855, COUNSEL FOR DEFENDANT/APPELLANT: Aaron G. Hauser
Court composed of Ulysses Gene Thibodeaux, Chief Judge, Phyllis M. Keaty, and Candyce G. Perret, Judges.

Opinion

PERRET, Judge.

***1** Defendant, Aaron Hauser, was indicted on July 19, 1983, for the July 4, 1983 first degree murders of his stepmother, Joan Hauser, and her son, John Leidig, violations of La.R.S. 14:30. He pled guilty to both counts without capital punishment and was sentenced to two concurrent life terms without benefit of parole, probation, or suspension of sentence on April 26, 1984. He now seeks review of the trial court's denial of his motion to correct his illegal sentences pursuant to *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and *Montgomery v. Louisiana*, —— U.S. ——, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). For the following reasons, we reverse the trial court judgment upon finding that Defendant has provided sufficient evidence to show he is not irreparably corrupt and is entitled to resentencing to two concurrent life sentences with the possibility of parole.[1]

FACTS:[2]

Defendant committed the first degree murders of his stepmother and her son on July 4, 1983, with the help of an accomplice, William Kinkade. Defendant was born on October 13, 1965, making him seventeen years, eight months, and twenty-one days old at the time of the murders.

Defendant's parents separated in 1977 when he was around twelve years old and his sister Robin was fourteen. Custody was granted to Defendant's father, George Hauser.[3] Defendant testified he went to live with his mother, Frances ****2** Hauser, to get away from his father. The next year, Defendant's parents agreed to transfer his custody to Frances. George testified he saw no future for Defendant in his home.

As an agricultural worker, George worked "from daylight to dark and sometimes more." Frances was the children's primary caretaker before the separation. When the children were little, George read books to them. As they got older, they would watch television together. The children grew up "just like any typical farm kids[,]" sometimes going fishing and performing "a few minor chores[.]"

Although George was "not a lovey-dovey man," he "had appreciation for kids[,]" and most children liked him. The children played and visited with their cousins who lived nearby and participated in "school parties, Four-H Club activities." Defendant "was just a normal kid" who spent his time with George or Frances, his cousins or "some other kids in the neighborhood." Every two years the family visited Frances's family in Maryland; in the other years, the family vacationed at various places around the country.

***2** The Hausers' divorce became final on January 4, 1979. In August of 1979, the Hausers agreed to transfer custody of Defendant's sister Robin to Frances. Defendant said Robin asked to live with Frances because George did not want her anymore. He said George put all of Robin's things "in garbage bags and put them out on the attorney's parking lot." Defendant and Frances rented a trailer and brought Robin and her things back to Kerrville, Texas.

George described Defendant as "the average kid" in relation to his performance in school. George did not whip the children, but he disciplined them with lectures. He did not consider Defendant to be a troublesome child. He thought Defendant wanted to live with Frances after the divorce because she babied him. George did not think the children ever feared him.

****3** George had limited contact with his children once they moved to Texas with their mother. They saw each other only when George would "go get them," and he "didn't have funds to run to Texas." Still, he testified he saw them about every two weeks. However, Defendant testified George never called or wrote to the children after they went to live with their mother. Defendant disagreed with George's testimony that he saw them every other week and took them out to eat. He said George never initiated any contact with them. When asked whether Defendant and Joan had a loving relationship after he and Joan were married, George replied, "If you was [sic] a little kid and a strange woman moved in, would you have a loving relationship? You may have a respect, but you wouldn't have a loving relationship."

Defendant dropped out of school in the ninth grade, but he obtained his GED and wanted to further his education. He thought about going to Sowela Technical Community College to learn welding. When he told his father, George said Sowela cost $25 per month, so he would give him $25 a month but no more. Defendant looked at other options, but they were too expensive, so he enlisted in the Navy at age seventeen with his mother's consent. He "felt like that was the only way out to have a better life."

According to Defendant's testimony at the resentencing hearing, after he enlisted, he was beaten and sexually assaulted in boot camp. Mr. Kinkade was Frances's next-door neighbor, and he had also been in the Navy. Frances told Mr. Kinkade about what happened to Defendant, and he and Mr. Kinkade became good friends.

Defendant told no one in a position of authority about the assault, but he called Frances a few days later "and tried to tell her some of what happened." Defendant denied the incident happened when questioned by Navy investigators. ****4** Their report of the attack indicates Defendant had a lump on his head and two fractured ribs when the investigators spoke to him. Defendant was discharged for medical reasons regarding his eyesight, and he returned to Kerrville.

Defendant testified Frances spoke to George about the assault and insisted that Defendant himself tell George what happened. Finally,

Defendant called his father. After about thirty seconds of conversation, George told Defendant he was not his responsibility anymore, and the conversation ended.

George testified he never knew anything about Defendant being abused in the Navy. In fact, he believed Defendant "never was active or inducted or whatever. He was just wanting to." However, when asked about Defendant joining the Navy, George also testified Defendant had called one night and said whatever was going on "didn't suit him." George explained, "And he was wanting me to do something, but how could I do anything from here and this is up around the Great Lakes somewhere? And I told him, son, that's just part of it; you've got to learn to live, to take directions from somebody else."

***3** Defendant "wanted to do anything to strike back" at George. He felt George "was responsible for what happened to [him] in the Navy[.]" Defendant said, "I felt like everything bad in my life at that time was caused by him." He believed "if he would have been a father to me, at least sometime in my life when I really needed it, I wouldn't have been hurting like I was then." Defendant no longer felt that way, but he testified, "No 17-year-old boy that something like that happen to him is going to be able to think clearly and rationally."

Defendant felt George had hurt his mother and his sister. Also, he felt if George "would have helped [him] get some kind of a more decent life, [he] wouldn't have enlisted in the Navy, [and the assault] wouldn't have happened." He wanted to get back at his father. Defendant "didn't have much of a ****5** relationship" with his stepmother Joan, and he had no ongoing relationship with his stepbrother John. George considered himself to have "somewhat of a loving relationship" with John.

Mr. Kinkade gave a statement on the day of the murders in which he said Defendant had been upset about three weeks before when he had asked his father for money from a trust or other type of fund. George would not give him the money. Mr. Kinkade later agreed to go to Louisiana with Defendant to pick up some of his things. In Kerrville, they planned their trip to Beauregard Parish as a robbery. Defendant asked Mr. Kinkade to accompany him to take things his father had that belonged to him. He specifically mentioned education money that Defendant thought George had. They purchased surgical gloves so they would not leave fingerprints. Prior to the trip, Defendant paid for guns that Mr. Kinkade purchased in his name because Defendant was underage.

The pair left Kerrville on a Sunday evening in Frances's pickup truck and arrived in Beauregard Parish around 3:00 a.m. Frances was out of town to attend a relative's funeral. They parked their vehicle in the woods and left the truck with Defendant and Mr. Kinkade carrying flashlights they had purchased in Kerrville. Defendant carried a .223 caliber "mini-14" semi-automatic rifle, and Mr. Kinkade carried a .357 revolver. They waited in a shed near the house until daylight. Defendant took the mini-14 and led Mr. Kinkade under a fence and through a barn until they got close to the house. They saw a man leave the house, and Defendant went inside. While Mr. Kinkade waited outside for Defendant, he heard gunfire and a woman's scream from inside. He fled the scene to a nearby house and reported a shooting to the Beauregard Parish Sheriff's Department.

Defendant testified he did not see Joan's car at the house, and he thought no one was home. He wanted to retrieve a rock collection George would not let him ****6** have and a

small coin collection. However, Defendant said the main reason was "to let him know that – you know, that I hurt and that I felt like he hurt me a lot when I was a little kid." Defendant opened a door on the side of the house, still armed with the mini-14, and saw Joan there. He said he "just was overcome with emotion," and he went in the house and shot her. He then walked down the hall to his former bedroom and saw John in his bed. Defendant felt that was still his bedroom, and he was upset to see John there. He shot John in the face and the right arm. John's body was found in his bed with the covers pulled up over it. No blood was found on the outer covers, suggesting Defendant covered John after he shot him.

A cellmate of Defendant gave a statement saying Defendant told him about shooting Joan and John and robbing the house. Defendant told the cellmate he then found a pitcher of Kool-Aid in the refrigerator and drank it. Defendant admitted to his cellmate that he originally said Mr. Kinkade had murdered the victims.

***4** Another cellmate gave a statement saying Defendant told him he wanted to "get back at his step mother and step brother for what they had done to him when he was little." Defendant described the shootings to him and told him how he found some money and took it, drank some Kool-Aid, took the car, and left. The cellmate said Defendant laughed the entire time he told his story.[4]

After the murders, Defendant looked around the house for his collections, focused on wanting his things. Texas authorities arrested Defendant in Kerrville later in the day in the vehicle he and Mr. Kinkade had taken to DeRidder. They seized gold and silver coins, a mini-14 semi-automatic rifle, ammunition, a pair of surgical gloves, and other items. When George later went through the house, he ****7** said gold and silver coins, paper money, savings bonds in his name, and a savings passbook were missing.

Joan's autopsy report indicated she sustained two gunshot wounds, either of which could have been fatal. One wound was to the right cheek below the right eye, and the second wound was to the right posterior chest. John's autopsy report indicated he also sustained two gunshot wounds. The wound to his head, just below the right eye, caused his death. A second wound was to his right forearm.

Mr. Kinkade was also charged with two counts of first degree murder and one count of aggravated burglary for his part in these events. *State v. Kinkade*, 470 So.2d 442 (La.App. 3 Cir. 1985). He pled guilty to attempted aggravated burglary in exchange for dismissal of those charges. This court affirmed his sentence of fifteen years at hard labor, enhanced with an additional mandatory two-year term to be served consecutively and without benefit of parole, probation, suspension of sentence, or credit for good time pursuant to La.R.S. 14:95.2 because his crime involved the use of a firearm.

George believed the State should pursue the death penalty for Defendant's crimes. However, he was advised that a jury would probably not do that, and he believed Defendant would spend his life in prison without parole. George's step-children (Joan's surviving children) agreed to life sentences without parole. George believed Defendant would "never be a productive citizen." He had not communicated with Defendant since the murders because he had no "interest in associating with somebody with that frame of mind." Although Defendant wrote to George a few times during his first year or two at Angola, he "never asked for forgiveness or apologized or

anything." George preferred that Defendant "stays locked up." If Defendant were released, George would "like for the Court to have him stay out of Beauregard Parish ...."

****8** Of Joan's four children, two were adults, and one was in college. Only John lived in George's home. John told his father he would rather live with George in the country than with his father in town. George considered that "somewhat of a loving relationship."

George testified he was a Christian who believed in the hereafter. At first, he said he believed people could change. However, George stood by his belief that, even in spite of evidence, Defendant has not changed since the murders. He felt Defendant had the opportunity for a relationship as he was growing up in George's home, but instead, he chose "to go out and kill two people."

***5** Dr. Raymond Leidig, a veterinarian who was Joan's first husband, testified the District Attorney's office had advised him and his children "on what to accept" as Defendant's plea. Dr. Leidig understood Defendant "had pleaded guilty and would take life imprisonment without parole." He believed Defendant "should stay, serve his sentence" for the rest of his life. When asked if he believed people could be rehabilitated, Dr. Leidig responded, "I believe people can be saved and forgiven by God."

About ten years after the murders, Dr. Leidig received a letter from Defendant in which Defendant asked for Dr. Leidig's forgiveness. Dr. Leidig told Defendant he had forgiven him, "but the two people on this earth that needed to forgive him were in the grave and that the only forgiveness he could seek further than that would be forgiveness from the Lord God and I wished that he would." Defendant wrote Dr. Leidig again to say "he had found God in a prison church service[,]" and he thanked Dr. Leidig for responding to his letter.

Dr. Leidig said Defendant wrote him again about a month later. He "just about called every name that any person could call anybody; and some of them wasn't [sic] too nice. And low-rated me for not writing him back after the second ****9** letter." Dr. Leidig described Defendant's words as "[p]rofanity and anything else you want to think of." Dr. Leidig told the trial court, "when the Supreme Court made this ruling, they were unable to make a ruling that would raise my son and his mother from the grave. Since they've got to stay there, my personal feeling is that the man that put them there should have to stay where he is." When asked about his beliefs of convicted felons, he explained, if you serve your time that is set, put upon you by the courts, you have the right to be released." Dr. Leidig could not say whether Defendant had been changed with rehabilitation, but he would be glad if that were true.

Donna Kay Leidig Kelly, John's sister, testified she had been in favor of the death penalty for Defendant, but "[a]s long as he was going to stay" in prison, she "was good with that. Because [she] would not have to deal with this again, ever." Ms. Kelly opposed Defendant having parole eligibility. She worked in the medical field, and she had "seen what the outcome of some supposedly rehabilitated people have done."

Ms. Kelly testified she was never aware of any conflict that had arisen between Joan and Defendant or John and Defendant. She knew of nothing that may have provoked Defendant. Ms. Kelly heard the testimony insinuating Defendant lacked attention from and had a tough life living with George. She noted her mother and brother contributed nothing to that, but they were the ones he

killed. She said John enjoyed his life on the farm, liked being outdoors, and never complained about George, who she said she had never seen get mad. Her mother likewise never complained about George being abusive or mean. Ms. Kelly described George as "a wonderful man" who was very good to her mother and her brother. She has had no contact with or from Defendant since the murders.

****10** David Leidig, Joan's son and John's brother, testified he had no bad feelings toward Defendant. However, he felt Defendant "should stay in prison to serve his sentence which was agreed to at that time." He did not think Defendant should have parole eligibility. Neither Joan nor John ever told Mr. Leidig of any conflict with Defendant or of anything that might have provoked him. Mr. Leidig did not recall ever meeting Defendant, and he had never had any contact with him. He considered Defendant's acts to be those "of a cold-blooded killer." He thought those acts "elevate[ ] this crime to a different level[.]" He also felt Defendant "chose life without parole, not 35 years then parole."

PROCEDURAL HISTORY:

***6** On March 19, 2013, Defendant filed a pro se motion to correct an illegal and invalid sentence based on *Miller*. The trial court denied the motion without a hearing on March 22, 2013, finding Defendant was an adult over the age of eighteen and not a juvenile, as his motion alleged.[5] This court denied Defendant's writ application on the grounds that *Miller*, 567 U.S. 460, 132 S.Ct. 2455, did not apply retroactively. *State v. Hauser*, 13-391 (La.App. 3 Cir. 8/5/13) (unpublished opinion). The Louisiana Supreme Court denied his writ application. *State ex rel. Hauser v. State*, 13-2028 (La. 7/31/14), 146 So.3d 202.

Defendant filed a motion to have counsel appointed to represent him on August 7, 2013. The trial court denied that motion because Defendant was represented by counsel at the time he was sentenced and because *Miller* did not apply retroactively.

On September 4, 2014, Defendant filed a petition for writ of *habeas corpus* in the United States District Court for the Western District of Louisiana. While ****11** Defendant's *habeas* writ was pending, the State filed a motion to implement the new rule of law set out in *Miller* and *Montgomery* on April 13, 2016. The motion explained that legislation pending at the time would incorporate those decisions into Louisiana law; once that legislation was enacted, Defendant would be entitled to the hearing he requested in his motion to correct his illegal and invalid sentence. Thus, the State asked the trial court to reconsider Defendant's motion in light of *Miller* and *Montgomery*. The trial court issued an order on April 13, 2016, for a hearing to be set within sixty days of the effective date of the anticipated new legislation implementing *Miller* and *Montgomery*.

The State filed another motion to reconsider Defendant's sentence on June 23, 2016. That motion sought a sentencing hearing pursuant to La.Code Crim.P. art. 878.1 in effect at the time even though the legislature had failed to enact the expected legislation. The State noted Defendant would be entitled to a hearing on his parole eligibility according to *Miller* and *Montgomery* even without new legislation. In response, the trial court appointed counsel for Defendant and scheduled a status conference to discuss pre-hearing issues.

On July 13, 2016, Defendant filed another motion to correct an illegal sentence and set

a date for the *Miller* hearing. He also asked the trial court to appoint counsel and to provide funding for experts for his defense team. Specifically, Defendant's motion sought a defense team of two lawyers with specialized experience, a fact investigator, and a mitigation investigator. The trial court denied the motion as moot and "[a]lready addressed."

Defendant made an oral motion to recuse both judges of the Thirty-Sixth Judicial District Court on July 26, 2016, followed by a written motion filed on September 9, 2016. Judge Vernon B. Clark of the Thirtieth Judicial District Court was appointed to hear the motion. On November 17, 2016, Judge Clark rendered a ****12** written judgment granting the motion to recuse as to Judge Martha Ann O'Neal but finding no factual basis to recuse Judge C. Kerry Anderson. The judgment designated Judge Anderson as the presiding judge for all future proceedings in the matter.

After numerous filings (indicated on the federal court's docket sheet), on September 2, 2016, the federal court granted Defendant's petition for *habeas corpus* and remanded his case to the trial court for resentencing. Defendant filed a motion for a "reliable sentencing hearing" consistent with *Miller* and for a funding source for mitigation specialists on April 28, 2017. The trial court responded by setting a pre-trial conference to discuss scheduling and pre-trial issues and to set a scheduling order.

***7** On September 19, 2017, the State filed its notice of intent to seek sentences of life without the possibility of parole ("LWOP") pursuant to La.Code Crim.P. art. 878.1 and 2017 La. Acts No. 277. On September 27, 2017, the State filed an opposition to Defendant's motion for a reliable sentencing hearing. It also filed procedural objections to Defendant's claim of a right to resentencing pursuant to *Miller* and *Montgomery* on December 12, 2017.

The trial court issued an order on January 24, 2018, setting a *Miller/Montgomery* hearing. On January 31, 2018, the trial court issued another order denying Defendant's request to provide funds for a mitigation specialist. The order also denied Defendant's request to require the State to prove aggravating factors at the *Miller/Montgomery* hearing. The trial court filed written reasons for its rulings.

On March 23, 2018, Defendant filed a motion to preclude a life sentence without parole because of the State's failure to provide funding for the resentencing hearing. Defendant also filed a motion for funding for a psychologist ****13** or psychiatrist and other expert witnesses in anticipation of the resentencing hearing on April 25, 2018.[6] The hearing of that motion and for resentencing began on April 26, 2018. The trial court issued an order on May 30, 2018, which stated:

> [T]he Court hereby DENIED the motion for Funding to be provided by the Criminal Court Fund and DENIED that defendant proved the necessity of expert testimony but hereby ORDERS the Office of the Public Defender for the 36th Judicial District or the Louisiana Public Defender Board to pay the appointed or designated psychiatric/psychological examination or any other expert deemed desirable by defense at a cap of $3500 upon receipt of an itemized bill for services rendered.

The resentencing hearing reconvened on July 6, 2018, to accept exhibits from both parties,

hear testimony from witnesses, and establish a post-hearing briefing schedule. Prior to the close of the hearing, the trial court ascertained that Defendant had been given the opportunity to present all the evidence he wanted. Defendant filed his memorandum in support of his resentencing on August 14, 2018, and the State filed its memorandum on August 30, 2018.

On December 20, 2018, the trial court issued its ruling and ordered Defendant to "continue to serve his existing sentences of life imprisonment without parole eligibility on each of the two counts of First Degree Murder." Defendant now appeals that ruling.

On appeal, Defendant raises the following assignments of error:

1. The Trial Court Violated Clearly Established Law in Ruling that *Miller v. Alabama* Does Not Apply to this Case.
2. The Trial Court Failed to Vacate the Previously Imposed Unconstitutional Sentence.
3. Because the Trial Court Ruled that *Miller* did not Apply, it Failed to Undertake the Analysis Required By the Eighth Amendment.
4. The Trial Court Erred in Concluding that Aaron Hauser's Crime was not the Result of Transient Immaturity.

****14** 5. The Trial Court Failed to Conduct an Analysis as to whether Aaron Hauser is Irreparably Corrupt, resulting in an Unconstitutional Sentence.

6. The Sentencing Judge's Improper Focus on the Nature of the Crime Further Rendered Him Unable to Undertake the Analysis Required by the Eighth Amendment.
7. The State Failed to Meet its Burden in Establishing that Aaron Hauser is the "Worst Offender" with the "Worst Case."

***8** 8. The Trial Court Erred in Failing to Apply a Presumption Against Sentencing a Juvenile to Life Without the Possibility of Parole.

9. The State Failed to Rebut the Presumption that Aaron Hauser Should be Eligible for Parole When it Failed to Prove that he is the Rare Juvenile Who is Irreparably Corrupt.
10. No Reasonable Sentencer could Conclude that Aaron Hauser has not Demonstrated Maturity and Rehabilitation.
11. The Trial Court Erred when it Denied Aaron Hauser a Critical Member of his Defense Team — a Mitigation Investigator.
12. Aaron Hauser's Sixth Amendment Rights were Violated when he was Sentenced by a Judge instead of a Jury.
13. The Trial Court Erred when it Failed to Limit the Scope of Victim Impact Evidence and Testimony[.]
14. Aaron Hauser was denied his Sixth Amendment right to Effective Assistance of Counsel at Sentencing[.]
15. Aaron Hauser was Denied Effective Assistance of Counsel because his Attorneys Were Working under a Direct Conflict of Interest.
16. Aaron Hauser's Counsel Failed to Demand on his Behalf "All Resources Necessary to Provide High Quality Legal Representation" as Mandated by the LPDB Performance Standards.
17. Aaron Hauser's Counsel Failed to Assemble the Defense Team Mandated by the LPDB Performance Standards.
18. Aaron Hauser's Counsel Failed to Perform the Mitigation Investigation required by *Miller v. Alabama*, *State v. Montgomery*, La. C. Cr. P. art. 878.15 and the LPDB Performance Standards.
19. The Absence of Mitigating Evidence at the Sentencing Hearing was not the Result of Defense Counsel's "Reasonable Strategic ****15** Decisions" Because she Failed to Perform the Investigation

Necessary to Make those Decisions.
20. Counsel's Deficient Performance Prejudiced the Defense at Aaron Hauser's *Miller* Sentencing Hearing and Resulted in the Trial Court Erroneously Sentencing Aaron to Die in Prison.

ERRORS PATENT:

In accordance with La.Code Crim.P. art. 920, all appeals are reviewed for errors patent on the face of the record. After reviewing the record, we find there are no errors patent.

DISCUSSION:

Before we address Defendant's specific claims, we begin with a review of the applicable Louisiana statutes and controlling jurisprudence regarding juvenile sentencing. Louisiana Code of Criminal Procedure Article 878.1 states, in pertinent part:

> B. (1) If an offender was indicted prior to August 1, 2017, for the crime of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense and a hearing was not held pursuant to this Article prior to August 1, 2017, to determine whether the offender's sentence should be imposed with or without parole eligibility, the district attorney may file a notice of intent to seek a sentence of life imprisonment without the possibility of parole within ninety days of August 1, 2017. If the district attorney timely files the notice of intent, a hearing shall be conducted to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to R.S. 15:574.4(G). If the district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to R.S. 15:574.4(E) without the need of a judicial determination pursuant to the provisions of this Article. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.
> ***9** ....
>
> C. At the hearing, the prosecution and defense shall be allowed to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal ****16** history of the offender, the offender's level of family support, social history, and such other factors as the court may deem relevant. The admissibility of expert witness testimony in these matters shall be governed by Chapter 7 of the Code of Evidence.
>
> D. The sole purpose of the hearing is to determine whether the sentence shall be imposed with or without parole eligibility. The court shall state for the record the considerations taken into account and the factual basis for its determination. Sentences imposed without parole eligibility and determinations that an offender is not entitled to parole eligibility should normally be reserved for the worst offenders and the worst cases.

Louisiana Revised Statutes 15:574.4(G) states, in pertinent part:

> (1) Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S.

14:30.1) who was under the age of eighteen years at the time of the commission of the offense and whose indictment for the offense was prior to August 1, 2017, shall be eligible for parole consideration pursuant to the provisions of this Subsection if a judicial determination has been made that the person is entitled to parole eligibility pursuant to Code of Criminal Procedure Article 878.1(B) and all of the following conditions have been met:

(a) The offender has served twenty-five years of the sentence imposed.

(b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with R.S. 15:827.1.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained a GED certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED certification due to a learning disability. If the offender is deemed incapable of obtaining a GED certification, the offender shall complete at least one of the following:

(i) A literacy program.
****17** (ii) An adult basic education program.
(iii) A job skills training program.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

***10** (2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.
(3) The panel shall render specific findings of fact in support of its decision.

In *Miller*, the Supreme Court addressed the life sentences without the possibility of parole of two juvenile defendants, one from Alabama and the other from Arkansas. The Court held "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479, 132 S.Ct. 2455. The Court did not "foreclose a sentencer's ability to make that judgment in homicide cases," but it required courts "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

[1] [2] *Miller* "does not categorically bar a

penalty for a class of offenders or type of crime ....” *Id.* at 483, 132 S.Ct. 2455. It does require a sentencing court to “follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Id.* That court “must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *Id.* at 489, 132 S.Ct. 2455.

**18 [3] *Montgomery* likewise prescribed a hearing to consider “ ‘youth and its attendant characteristics’ ” as sentencing factors. *Montgomery*, 136 S.Ct. at 735. The Court found parole eligibility ensures “juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.” *Id.* at 736. “The opportunity for release will be afforded to those who demonstrate the truth of *Miller*’s central intuition—that children who commit even heinous crimes are capable of change.” *Id.* Thus, prisoners sentenced to LWOP as juveniles “must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.” *Id.* at 736-37.

ASSIGNMENT OF ERROR NO. 1:

Defendant argues the trial court violated clearly established law in ruling that he was not entitled to a hearing pursuant to *Miller*. The trial court issued a lengthy and detailed ruling on December 20, 2018, in which it agreed with the State that *Miller* did not apply to this case because Defendant’s sentence was imposed pursuant to a plea agreement. However, even though it found *Miller* did not apply, the trial court proceeded with a hearing pursuant to La.Code Crim.P. art. 878.1 and La.R.S. 15:574.4. Defendant contends the trial court’s ruling violates the federal court’s remand for resentencing under *Miller*.

In *State ex rel. Jenkins v. State*, 17-302, p. 1 (La. 8/31/18), 252 So.3d 476, 476 (per curiam), our supreme court, citing *Montgomery*, 136 S.Ct. at 736, held “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” The court determined a *Miller* hearing was unnecessary because La.R.S. 15:574.4(E) **19 remedies a *Miller* violation by providing parole eligibility. Thus, the defendant was entitled to parole eligibility without a *Miller* hearing.

*11 Louisiana Revised Statutes 15:574.4(G) now provides parole eligibility when statutory requirements are met for juveniles, such as Defendant, who were convicted of first degree murder and indicted prior to August 1, 2017. We find the supreme court’s ruling in *Jenkins*, 252 So.3d 476, recognizes that La.R.S. 15:574.4(G) satisfies the *Miller* requirements. Thus, Defendant received the hearing *Miller* requires, even though the trial judge said the case itself did not apply.

The defendant in *State v. Doise*, 15-713 (La.App. 3 Cir. 2/24/16), 185 So.3d 335, *writ denied,* 16-546 (La. 3/13/17), 216 So.3d 808, was also a juvenile at the time he committed second degree murder. He also pled guilty. The trial court sentenced him to life imprisonment with parole eligibility after serving thirty-five years.

The *Doise* defendant argued La.Code Crim.P. art. 878.1 and La.R.S. 15:574.4(E) did not satisfy *Miller* and

were unconstitutional. This court noted the article and the statute were enacted in response to *Miller* and found "the mere possibility of being released on parole is more than sufficient to satisfy the chance of parole eligibility after a hearing established in *Miller* for juvenile homicide offenders." *Doise*, 185 So.3d at 342. Thus, "the mere access to the Board of Parole's consideration satisfies the mandates of *Miller*." *Id.* We note La.R.S. 15:574.4(G) provides the same remedy to defendants indicted prior to August 1, 2017, as Subsection (E) was determined to grant in *Doise* at the time, before Subsection (G) was enacted.

Further, in *Doise*, this court cited *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), in which the Supreme Court held "a juvenile who commits a non-homicide ****20** offense punishable by life imprisonment *must* be *eligible* for parole." *Doise*, 185 So.3d at 342. However, relying on *State v. Shaffer*, 11-1756 (La. 11/23/11), 77 So.3d 939 (per curiam), this court noted, "the juvenile may not be *released* on parole unless the Board of Parole decides to release him.... Thus, in reality, a juvenile who commits a non-homicide offense punishable by life in Louisiana is only promised the possibility of being released on parole."[7] *Doise*, 185 So.3d at 342. This court stated, "It stands to reason that a juvenile who commits a *homicide* offense punishable by life imprisonment should be granted no greater relief" than one who commits a non-homicide offense. *Id.* Based on these principles, this court concluded the defendant failed to prove the legislative provisions implemented in response to *Miller* were unconstitutional.

Applying this court's reasoning in *Doise*, 185 So.3d 335, we find the provisions of La.Code Crim.P. art. 878.1 and La.R.S. 15:574.4(G) provide the same protections as *Miller*. Further, La.Code Crim.P. art. 878.1(D) and *Miller* both recognize the sole purpose of the hearing is to determine parole eligibility. Thus, the trial court correctly believed it was "only tasked with determining whether the Defendant should be granted an *opportunity for parole consideration*."

In the *Montgomery* remand from the Supreme Court, our supreme court explained:

> During the 2016 legislative session, legislation was proposed to address those cases in which persons that committed murder as juveniles and were sentenced to life imprisonment without parole eligibility before *Miller* was decided, who the Supreme Court determined in *Montgomery* must be resentenced in accordance with the principles enunciated in *Miller*. However, the Legislature ultimately failed to take further action in the last few moments of the legislative session regarding sentences of life without parole for juvenile homicide offenders. *See* HB 264 of the 2016 Regular Session. Therefore, in the absence of further legislative action, the ****21** previously enacted provisions should be used for the resentencing hearings that must now be conducted on remand from the United States Supreme Court to determine whether Henry Montgomery, and other prisoners like him, will be granted or denied parole eligibility.

***12** *State v. Montgomery*, 13-1163, p. 3 (La. 6/28/16), 194 So.3d 606, 608 (*Montgomery II*). The "previously enacted

provisions" to which the supreme court referred are La.Code Crim.P. art. 878.1 and La.R.S. 15:574.4(E). *Montgomery II*, 194 So.3d at 607. Additionally, "the District Court must also be mindful of the Supreme Court's directive in *Miller*, 132 S.Ct. at 2469, 'to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.' " *Montgomery II*, 194 So.3d at 609. Accordingly, even though the trial court found *Miller* to be inapplicable, it still considered the *Miller* test by applying La.Code Crim.P. art. 878.1 and La.R.S. 15:574.4(G) and by addressing the *Miller* directives. Thus, even if the trial court erroneously found *Miller* did not apply, Defendant received the hearing *Miller* requires.

[4]The trial court noted Defendant agreed to the sentences. The sentencing court necessarily had to consider the agreement before it accepted it. The trial court's ruling explained that once the sentencing court accepted the agreement, it had no choice about the sentences. Nevertheless, because Defendant had to decide to enter the plea, and the sentencing court had to decide whether to accept it, the trial court found the resulting sentences were not mandatory. The trial court believed the sentencing court "would have of necessity included consideration of the mitigating characteristics" of Defendant's youth.

We find that the sentencing court carefully ensured that Defendant understood all the rights he relinquished by making his plea. The court questioned Defendant about his education; his understanding of prior proceedings, the charges ****22** in his case, his *Boykin* rights, the possible verdicts at trial, the possible sentences for those possible verdicts, the ramifications of his plea, and the voluntary and free will nature of his plea, and the facts of the case prior to accepting the plea. The trial court did not, however, question Defendant about the *Miller* factors, presumably because it had no discretion in imposing the statutorily-required sentences for the pled charges. Thus, we find that the plea colloquy did not, contrary to the trial court's ruling, consider any mitigating circumstances or satisfy the requirements of *Miller*. However, as discussed, the trial court applied the *Miller* factors and provided Defendant with a *Miller*-equivalent hearing at resentencing. Thus, we find this assignment of error lacks merit.

ASSIGNMENT OF ERROR NO. 2:

Defendant contends the trial court erroneously failed to vacate the previously imposed unconstitutional sentences. Instead, the trial court ordered Defendant to "continue to serve his existing sentences of life imprisonment without parole eligibility on each of the two counts of First Degree Murder."

[5]The purpose of the federal court's remand was to resentence Defendant pursuant to *Miller*/*Montgomery*. The trial court's sole purpose was to determine whether Defendant's mandatory life sentences were to be served with or without parole eligibility as the court did in *Montgomery II*.

[6]We find that the trial court did just that. Had the trial court determined Defendant was eligible for parole, it presumably would have vacated the sentences and resentenced him to life imprisonment with parole eligibility. However, because the trial court determined Defendant was not parole eligible, vacating his prior sentences and resentencing him to two new terms of life imprisonment without

parole eligibility was unnecessary. As this court noted in *State v. Comeaux*, 17-682, p. 5 (La.App. 3 Cir. 2/15/18), 239 So.3d 920, 926, *writ denied,* ****23** 18-428 (La. 1/14/19), 261 So.3d 783 (emphasis in original), "[g]iving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. **A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.**" Accordingly, we find no merit to this assignment of error.

ASSIGNMENTS OF ERROR NOS. 3, 4, 5, 6, 7, 8, AND 9:

***13** Defendant argues the trial court's failure to apply *Miller* led to its failure to undertake the analysis required by the Eighth Amendment. Thus, Defendant was deprived of his substantive sentencing rights created by *Miller* and applied by *Montgomery.* As discussed in Assignment of Error No. 1 above, we find that the trial court's analysis under La.Code Crim.P. art. 878.1 and La.R.S. 15:574.4(E) satisfies the *Miller* directive.

Defendant contends the trial court erred by failing to make the specific finding that his crime was not the result of transient immaturity. He also alleges the trial court failed to conduct an analysis to determine whether he is irreparably corrupt. Defendant also contends the trial court placed improper focus on the heinous nature of the crimes. These errors, Defendant argues, rendered the trial court unable to perform the proper analysis required by the Eighth Amendment and led to an unconstitutional sentence.

Defendant also contends the State failed to establish he is the "worst offender" with the "worst case." He believes the trial court erroneously failed to apply a presumption against sentencing a juvenile to life without the possibility of parole. He also argues the State failed to rebut a presumption that he should be eligible for parole and failed to prove he is the rare juvenile who is irreparably corrupt.

****24** The *Montgomery* court explained consideration for parole eligibility ensures that "juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery*, 136 S.Ct. at 736. *Montgomery* notes any pre-*Miller* juvenile convicted of homicide could receive a LWOP sentence. Post-*Miller*, however, "it will be the rare juvenile offender who can receive that same sentence." *Montgomery*, 136 S.Ct. at 734.

However, a juvenile who is a worst offender in the worst case is not entitled to the possibility of parole. Justice Crichton of our supreme court recognized the "unfortunate truth" that some inmates "demonstrate irretrievable depravity, ... have set forth zero effort towards rehabilitation and redemption, and are simply not ready for a parole eligible adjudication." *Montgomery II*, 194 So.3d at 610 (Crichton, J., concurring). In contrast, other inmates "were the victims of their own once transient immaturity and regrettable impulsivity, long since passed[.]" *Id.* Those inmates "present the lowest risk designation based on their rehabilitative progress through the years." *Id.*

We find that neither *Miller/ Montgomery* nor *Montgomery II* require a court considering parole eligibility to make factual findings of transient immaturity or irreparable corruption. Rather, those cases

instruct a court to consider the circumstances of each particular case and determine whether those circumstances show a LWOP sentence is unconstitutionally disproportionate to the crimes committed as a juvenile. Thus, *Miller/Montgomery* do not necessarily presume a juvenile should be eligible for parole. Nevertheless, we find the evidence presented at the hearing, taken as a whole, shows Defendant may not be the "worst offender" with the "worst case" who is irreparably corrupt. Defendant has shown ****25** significant effort toward rehabilitation and redemption, and Angola considers him to be of its lowest risk designation.

***14** Robert Lowrey, Jr. testified at the hearing as a licensed professional counselor with his most recent work "in relationship counseling, juvenile work, custody evaluations, and such as that." He had experience working with the Department of Children and Family Services and the Office of Juvenile Justice. The bulk of his work was "with juveniles and with relationship therapy. Marriage." He had no involvement with *Miller/Montgomery* cases before this.

The trial court accepted Mr. Lowrey as an expert in the field of counseling, and Mr. Lowrey testified on Defendant's behalf. He explained the "rather interesting description" of the American Academy College of Pediatricians (AACP) regarding "the teenage brain under construction." The developing front lobe is "not fully connected with the part of the brain that involves emotional response; and ... the frontal lobe is not fully developed until ages 23 to 25." Thus, "the adolescent is impeded in how to connect choices with emotions." The "thorough understanding of voluminous research in the field" is that the teenaged brain is not fully developed. Mr. Lowrey explained:

> The research overwhelmingly indicates that [seventeen-year-old juveniles] operate impulsively and in the emotional spectrum, rather than the intellectual spectrum because of the frontal lobe development or lack of development. The brain kind of matures at a point 23 to 25, and then we now call that an adult brain. Prior to that it is still exploding and developing and all of that. That has been indicated not only by counselors but by brain imaging and all kind of nuclear medicine work.

The ability to "connect a behavior with a consequence" was something Mr. Lowrey testified "adolescents are extremely lacking in ability to do." Such adolescents "operate more out of an emotional level rather than a reasoned level because of the developing position of the frontal lobe, which is the judgment ****26** center. Or it has even been called in research the chief executive officer of the brain."

Additionally, "[a]dolescents are most often highly influenced by peer groups." Thus, "they find it difficult to choose their own opinion over the peer group's opinion. They are heavily influenced by the peer group during the time of adolescence." Mr. Lowrey felt Defendant "would normally be influenced by an older peer." However, Mr. Lowrey agreed a seventeen-year-old would have an understanding of the permanency of death and would know that shooting someone in the head would likely cause death.

According to Mr. Lowrey, "[t]rauma and authoritarian parenting make it very difficult for juveniles." He described authoritarian parenting as "the military style. Do what I say when I say do it. Don't ask any questions." The "other side" is permissive, where a child can do what he wants; the "middle ground is the better ground, and that is called

authoritative." Mr. Lowrey would not "seek to judge [George] Hauser's mental workings" by stating an opinion about which style George used, but he testified he "was distressed" by George's comment that he was not a "lovey-dovey" person. An evaluation of George's parenting would require "extensive discussions" with him. Mr. Lowrey explained a parenting style could influence how a juvenile learns "to cope with life." He admitted he knew no details of this case other than Defendant murdered his stepmother and her son. He understood the purpose of the hearing was "to see what has happened in the last 35 years."

***15** Mr. Lowrey met Defendant at Angola approximately eight years before the hearing, and they have corresponded periodically since that time. Defendant's cousin told Mr. Lowrey "no one had visited him from the family in 11 years." Mr. Lowrey helped her facilitate a visit.

****27** The correspondence between Defendant and Mr. Lowrey was "just a personal connection" and not based on a professional relationship; Mr. Lowrey's experience was that incarcerated people "need a friend." Mr. Lowrey believed people can change. His initial contact with Defendant made him think Defendant "had a focus on making a life for himself within the prison for whatever length he was going to be there." Mr. Lowrey felt "he needed some encouragement."

Defendant and Mr. Lowrey corresponded "[f]our times a year, until recently[,]" when their correspondence increased. Mr. Lowrey, based on the correspondence, "came to believe that [Defendant] had learned a lesson or was learning a lesson and was capable of changing. And [his] impression has been that [Defendant] is not a danger to anyone else at this point." Defendant never expressed himself in their correspondence as angry, frustrated, or out of control. Mr. Lowrey clarified he was "not expressing a professional opinion[.]"

Mr. Lowrey testified Defendant had the "highly coveted" position of working at Angola's K-9 unit, a position that was "hard to achieve." Nevertheless, he was "not aware of anything that has been done with [Defendant] since his incarceration at Angola." He had seen Defendant only one time for "[p]robably 40 minutes." He has done no professional evaluation.

Defendant's success at Angola was within a highly structured environment. Mr. Lowrey believed "[i]f someone has been incarcerated for 35 years, they have learned how to cope with a variety of circumstances in a non-confrontive way; or, otherwise, they would be injured or dead." Mr. Lowrey's testimony about Defendant reflected simply what he felt personally from their relationship. As Mr. Lowrey stated, his testimony was not the result of a professional endeavor, examination, or evaluation.

****28** Terry Lane testified as a clinical social worker who "currently run[s] juvenile and adult sex offender treatment for adjudicated and/or convicted, with a few private referrals." He received training in victim intervention and was certified as a trauma interventionist. The trial court accepted Mr. Lane "as an expert in the field of sex abuse victims."

Mr. Lane believed recent research showed brain development is not complete until around age twenty-seven to thirty. The prefrontal cortex of the brain is the area of most concern when working with and treating juveniles; it deals with motor control, concentrating, planning, and problem solving.

Mr. Lane testified when Defendant was first at the naval training center in 1983, "he was having some stressful events at the time already." Defendant initially reported the physical and sexual assault on April 29, 1983. When Defendant returned to his hometown in Texas, he reported the assault to his recruiter. Mr. Lane testified his understanding of the assault was that "unidentified males, possibly two white and one Hispanic ... carried a pipe with some kind of padding or towels wrapped, maybe, on the end of it, and administered a beating to [Defendant] about the head and body, tied him to a bed, and sodomized him[.]" Mr. Lane's experience was that a victim such as Defendant typically felt ashamed and embarrassed about such an event. He stated:

> ***16** Younger children actually have some excited response that they feel very negatively about; and so there's many, many dynamics going on in a brain that the prefrontal cortex has clearly not reached a developmental stage that is equal to the adults that are in the situation and is much more emotionally responsive than logical.

Mr. Lane felt that type of trauma "allows a distortion" which he described as "a change in perspective. And those juveniles have their cognitive processing, their thinking, modified by the introduction of information that they're not old enough ****29** or mature enough to handle." Such juveniles often do not report the event for years.

Mr. Lane felt Defendant's untreated problems resulting from the assault were important to know because they create "immense self-esteem issues." Victims failed to understand what they did "to play into this role." Mr. Lane said, "It lowers their insulation against peer input in negative fashion, for sure; but it states more to a general I'm-not-worth-it attitude ...." Mr. Lane found it normal that Defendant had not told his father about the assault. If Defendant saw the attack "as somewhat his fault in some way ... then he's less likely to go to the dominant disciplinarian in his life to disclose what he sees as a weakness." However, Mr. Lane had no "firsthand knowledge about the relationship" between Defendant and his father.

Mr. Lane did not feel the trauma Defendant experienced excused the murders. He only met Defendant ten minutes before his testimony. His purpose in testifying was to "talk about impacts and additional pressures and stressors that could have been applied at the time ...." Juveniles do not have the same resources or skills to resolve those stressors as adults have. Mr. Lane understood Defendant's case was being reviewed for the appropriateness of the sentence, not for guilt or innocence.

Thomas Roller knew Defendant from Angola. Mr. Roller had "lived at the dog pen" with Defendant for his last eight years in prison. He was incarcerated for the second degree murders of his father and stepmother on February 26, 1988, six days before his eighteenth birthday. Mr. Roller pled guilty to two counts of second degree murder and was sentenced to life imprisonment without parole. When the ****30** *Miller/ Montgomery* cases were decided, prisoners were unsure how to proceed. Mr. Roller challenged his own sentence and was released from custody in 2015.[8]

***17** At Angola, Mr. Roller heard of Defendant years before they met. He testified, "Older guys were referencing [Defendant] in my efforts to do the right thing all the time." They told Mr. Roller that Defendant had "influenced hundreds and

hundreds of people to do the right thing. And just the way he lives, his conduct."

A prisoner had to be trusted to work in the dog pen. After twenty years of imprisonment, Mr. Roller "was considered a pretty model prisoner" and got the chance to live in the dog pen area, where no guards watched them at night. Mr. Roller had twenty-seven writeups during those twenty years, which he explained was "still considered a very model prisoner." He learned Defendant "had one minor rule infraction that the sentence was suspended" some years prior. Mr. Roller said ".003 percent of the [Angola] population" lives at the dog pen, ****31** representing fifteen beds of the more than sixty-three hundred inmates. A prisoner obtains that position based on "character, trustworthiness, and work ethic."

Mr. Roller's experience at Angola was that doing the wrong thing helped him "get along with the fellows better." Doing the right thing made a prisoner "stick out in a way you don't want to stick out among some very dangerous people that love mischief." Mr. Roller considered Defendant to be a role model to do the right thing, "the kind of guy to emulate." He noted:

> When there's no reason to do the right thing ... and you still do the right thing and you make it a point and you volunteer for extra work to help with dogs or to help cook an event at the Superdome, you know, feeding, you know, disaster victims, when you volunteer for extra work, it's something to emulate. It's the same way in society.

Mr. Roller testified at the hearing because he felt Defendant was deserving based on his "exemplary educational achievements," his conduct, and the trustworthiness of the prison officials. Mr. Roller believed part of the mission of the Department of Corrections was to rehabilitate; he felt Defendant showed rehabilitative efforts "[f]ar more than any person [he had] ever met there."

Mr. Roller commented, "There's some *Miller* applicants at Angola that truly terrify me. They're just scary. They have not done the right thing at all, and their mentality is just terrifying." Defendant was different from those because of his character, trustworthiness, and conduct; he was "what you want to emulate on doing the right thing[.]"

Robert Peters testified he visited Angola for three days in 2009 as part of a Mike Barber Ministries team helping with the "Crunch Bowl" at the prison. He returned a few months later for the rodeo and went to the dog pen, where he met Defendant. At first, Mr. Peters thought Defendant was a prison guard. He described Defendant as "[j]ust [a] super nice guy and just totally unassuming and just as pleasant as he could be. And the friendship was immediate." Defendant ****32** "was the only Angola person there at the dog pen." He escorted Mr. Peters and his family around the grounds.

Mr. Peters, his wife, and her parents became pen pals with Defendant. Mrs. Peters wrote to Defendant "at least five times a week." The family has visited Angola every year since 2009 in October for the rodeo and again on Good Friday. They knew the nature of Defendant's crimes from the beginning. Defendant has never asked the family for money or for help with his legal proceedings. The family gives Defendant birthday and Christmas gifts; they consider him a member of their family.

***18** A home and a choice of jobs awaits Defendant if/when he gets out of prison. Mr.

Peters recently bought a ranch with a separate apartment for Defendant. He has a used truck at the ranch for Defendant's use. He has "lined up four jobs for [Defendant] that he has a choice of." The Peters' goal is for Defendant to gain parole opportunity and come to Texas to live with them. The family believes Defendant deserves a second chance. Mr. Peters believes Defendant's "heart is pure, his sincerity is pure ... he's the poster child for trustees." He believes Defendant "with his tremendous positiveness and his tremendous ability ... he's going to pay back the community ... and make himself a model citizen and improve his life ...."

Lorri Peters agreed with her husband's testimony. She testified Defendant had warned her about inmates who would try to trick Mr. and Mrs. Peters into giving them money. Defendant told them all he wanted was their friendship.

Regarding the murders, Defendant told Mrs. Peters he went to get his belongings. He watched the house and thought no one was home when he saw his dad leave. Mrs. Peters testified Defendant "was shocked to find [John] in his bedroom in his bed; and it just – it just happened ... It just sent him into shock or ****33** anger or rage at the time." She did not "remember little details" like Defendant stealing things from the house or stopping to drink Kool-Aid after the murders. She did not recall anything about Defendant taking a car. What mattered to her was "where he is now."

Mrs. Peters thought Defendant was "a child, running around with somebody that was way too old for him that obviously is not a good person." She thought that had a lot to do with why Defendant entered the house with a .223 assault rifle. She did not believe Defendant went in the house "with the thought of murder." She did not know how Defendant had met Mr. Kinkade.

Mrs. Peters has heard more details of the nature of Defendant's crimes since they first met, but that has not changed her opinion of him at all. She thinks "he has been rehabilitated and reconformed [sic] in Angola." She believes "he's bettered himself." Mrs. Peters believes Defendant deserves a second chance to live outside of prison and said Defendant "[h]as offered up to [her] remorse." She sees Defendant as "a changed person." Mr. and Mrs. Peters have even discussed adding Defendant to their wills, and they want him to be a part of their family. Mrs. Peters' parents call Defendant their son, and he calls them Grandma and Grandpa.

Defendant was the last to testify. He understood the hearing was about the *Miller/Montgomery* rulings "that even children who commit heinous crimes are capable of change ... have a greater propensity for rehabilitation and if during their years of incarceration they've shown maturity, they must be afforded a meaningful opportunity for release."

Defendant did not think a juvenile could understand the implications of what he had done, taking "not just two people's lives, but ... someone's mother, someone's brother, son." He testified, "I'm not the same person, and I'm so sorry for what happened." He realized what he did not only took two people's lives, it ****34** also "ruined the lives of the people that loved them, even the lives of the people that loved me."

After his arrest, Defendant said he tried to write his father several times and even crocheted "a little hat to send him." He never received a reply. Defendant felt he had made peace with Raymond Leidig after receiving his letter of forgiveness.

At the time of the hearing, Defendant's sister was receiving treatment for leukemia at M.D. Anderson, and his mother had been injured in a recent fall. Neither was able to attend the hearing, but Defendant's sister wrote a letter in his favor.

***19** At Angola, Defendant had one conduct writeup around 1986 or 1988 for "not working fast enough." He received a reprimand that was suspended. He had no other disciplinary issues since that time.

After a few years at Angola, Defendant began taking correspondence courses. He passed five courses in anger management; finished the automotive technology school; and passed "the ASE certifications for engine repair, electrical electronic systems, automatic transmissions, manual transmissions, engine performance, [and] the H-back test." He went through the cooking school and completed numerous other educational programs.

Defendant was featured in a documentary filmed at Angola at the dog pen where he worked. He volunteered for that project "because everything that you see on TV about prison and prisoners is not always true. There's not all that drama." He wanted to show "there are a lot of people who are in prison that have really tried to rehabilitate themselves and do the right thing, regardless of what they've done in the past, regardless of how terrible of a crime they've committed." Defendant felt he "would be a good candidate for that." He said he accepted full ****35** responsibility for what happened, was sorry, wished it had never happened, and wished he "could go back and do things differently."

About forty hours of filming the documentary video at the dog pen at Angola was edited to thirty to forty-five minutes. It did not show Defendant displaying any remorse for the murders, even though Defendant testified they "did pretty lengthy interviews at different times about all of that[.]" The warden had "the final say-so as to what was actually – what would actually be aired."

Defendant first went to the dog pen in 1996. He left for a while when he was accepted into the automotive technology school. He gets up at 2:00 a.m. to check on the animals. Some days are very long and do not end until 7:00 p.m. Defendant tries "to be a role model for some of the guys who've just come there and are still trying to find their niche." He has been "a minimum A class trustee[,]" a classification not easily earned, since the summer of 1992. He does not have to be behind a fence; he can go anywhere on the prison grounds without supervision. He believes he has been rehabilitated and could rejoin society.

Defendant met a woman as a pen pal and eventually married her, but "it didn't last, like most prison relationships[.]" He never sought therapy as a result of the assault in the Navy because he did not want anyone to know about it. He might possibly be willing to undergo therapy, but he was not sure about the benefit because the assault happened so long ago. He believes he has done a lot in thirty-five years to overcome that incident. Defendant thinks the only thing he can do "is try to live [his] life in a way that would honor the victims, if there's ever such a thing."

On cross-examination, Defendant confirmed he takes full responsibility for what he did. However, he then testified "there were a lot of things that were contributing factors to it." He agreed he blamed his immaturity, and he said at the ****36** time he "didn't know the far-reaching implications of what taking somebody's life actually means." He felt his

father did not love him and did not treat him right. He no longer feels that way and is no longer angry with his father. He acknowledged he could have turned around and left the house when he saw Joan. In contrast to the autopsy report, Defendant said Joan never saw him, and she was not looking at him when he shot her on her right cheek slightly below her eye. Again, although the autopsy report showed a second shot to the right side of the chest, Defendant testified he did not remember Joan facing him. He thought he shot her in the back.

***20** Defendant likewise did not remember John looking at him even though the autopsy report showed one wound on the right side of the head beneath the right eye and another wound through his right forearm, as though he put his arm up to block the shot. Although Defendant would not say he committed the murders because he was raped in the Navy, he thought "everything has a bearing on the actual events that took place." He accepted responsibility for his acts, but he wanted a new beginning, a second chance. He asked the court to consider his youthfulness and the facts and circumstances. Defendant testified he harbored growing anger from around age ten to the time of the murders toward his father "[t]o an extent[,]" and his mother probably fueled that anger by telling him "different stories that had happened to her." Defendant said he feels no anger about being in custody; if he has anger, it is at himself because he could have done something better with his life.

Although Defendant knew of a prison rule that he could not contact relatives of victims, Defendant said he wrote to Dr. Leidig and to his father. He testified Dr. Leidig lied when he said Defendant responded to his letter and cursed him. Defendant said he actually thanked Dr. Leidig for writing him, told him he was sorry, and asked for forgiveness. He thought Dr. Leidig would have kept any letter ****37** Defendant had written him that "cussed him out and called him every other name," and he thought it suspicious that Dr. Leidig told no one about the supposed letter.

The trial court asked Defendant what he considered to be a proper punishment for taking two lives. Defendant responded, "if it was my loved one, I would want their life for it." He questioned whether the purpose of incarceration was punitive or rehabilitative, and he asked about the purpose of continued incarceration if "children who have committed heinous crimes are capable of change." Defendant did not see much difference between someone eighteen years old and another person one day younger except that the courts draw the line at age eighteen. He commented, "until our laws change or until our country, our cultures decide to take that issue up, we're stuck with the United States Supreme Court recognizing a juvenile as anyone under the age of 18." Defendant reiterated he thought "anybody is capable of change."

Assistant Warden Jonathan London wrote a character reference letter at Defendant's request dated September 9, 2016. Assistant Warden London considered Defendant "a hard worker ... a decent man at the core." He noted Defendant's dedication to the K-9 program. He explained inmates assigned to the dog pen "are carefully selected and highly trusted[.]" They are assigned to "the lowest security housing area on Penitentiary grounds ... [and] are often called upon to perform numerous special projects on and off Penitentiary grounds." Assistant Warden London also noted Defendant had "taken advantage of many educational and self-help programs" offered at Angola.

Lieutenant Colonels Johnny Dixon and Joe Norwood, Jr. also wrote a character reference

letter. They explained Defendant was assigned to the K-9 training center in October of 2001. Defendant "has awesome culinary skills and ****38** takes pride in the meals he prepares for the Dog Pen workers and staff." He keeps the kitchen "always clean, neat and kept to the highest sanitation codes."

Defendant's attention and caring attitude toward the dogs has identified medical problems with them, and he has summoned help through proper channels during off-duty hours that has saved the lives of these valuable dogs. He has worked long hours and performed extra duties. He has also volunteered to help in emergency situations such as floods and hurricanes. Importantly, the Lieutenant Colonels stated, "During the fifteen years [Defendant] has worked under our supervision, we have never seen him lose his temper. [Defendant] is always easy going and calm natured."

***21** Defendant's sister Robin wrote the court noting Defendant had applied himself in prison, achieved multiple accomplishments, and shown "his responsibility capabilities." She felt his conduct in prison showed "he can and does conform to rules and regulations, changing his life for the better."

Still others – pen pals – have written the trial court with laudatory words about Defendant. They spoke of how Defendant was completely open with them about his crimes and of how their relationships with him have changed their lives for the better. The letters spoke highly of Defendant's character, his positive nature, and his attitude of hope even in an environment of life without the possibility of parole.

Another letter from a prison ministry associate, Kevin Miller, noted he felt safe with Defendant and others who worked at the dog pen. He believed Defendant is not the same person now that he was as "a kid." He agreed with Defendant's original LWOP sentence, but he also agreed with the Supreme Court that a juvenile should not be punished as an adult. Mr. Miller stated, "No one can ****39** have a track record in a glass house as impressive as [Defendant's], and especially not for 35 years, and still make bad decisions he did as a youth."

Nevertheless, numerous people wrote to the trial court asking for Defendant to be denied parole. Some of the letters spoke of the horrendous crimes and the loss of the victims. Others simply stated they were opposed to Defendant being granted the opportunity of parole and/or being released from prison. Some of the writers mentioned they had heard Defendant was rehabilitated but were nevertheless strongly opposed to his eligibility for parole and to his release from prison.

In *State v. Williams*, 50,060 (La.App. 2 Cir. 9/30/15), 178 So.3d 1069, *writ denied*, 15-2048 (La. 11/15/16), 209 So.3d 790, the seventeen-year-old defendant fired fifteen rounds from a military assault weapon into a house where seven people were asleep. He bragged about the shooting, not knowing his intended victim was not in the house. One of the people inside the house was wounded, and an eighteen-month-old child was killed in his playpen.

The defendant was sentenced to LWOP; *Miller* was decided while his conviction and sentence were on appeal. At the *Miller* hearing, evidence showed the defendant compiled a lengthy disciplinary record while he was in jail awaiting trial. He refused to follow rules; he cursed and threatened deputies. The trial court again sentenced the defendant to LWOP. The second circuit affirmed the sentence noting the defendant was one of the worst offenders in one of the

worst cases.

Likewise, the seventeen-year-old defendant in *State v. Alridge*, 17-231 (La.App. 4 Cir. 5/23/18), 249 So.3d 260, *writ denied,* 18-1046 (La. 1/8/19), 259 So.3d 1021, stabbed a fifteen-year-old boy forty-nine times, wrapped his face in ****40** duct tape, and left his body covered with plastic in an abandoned house.[9] He was sentenced to LWOP. Testimony at the defendant's *Miller* hearing showed his juvenile record included possession of a contraband cell phone, obscenity, and two counts of battery of a correctional officer while he was in jail awaiting trial for the murder. The defendant "was on the highest security classification within the prison system[,]" which required him to be locked down for twenty-three hours a day. *Id.* at 289. His hands and legs were restrained during the one hour he was allowed out of his cell. This security level indicated the defendant was "one of the most dangerous inmates in Orleans Parish Prison[.]" *Id.*

***22** The trial court noted the heinous nature of the crime and found no mitigating circumstances. The court further found the defendant's conduct did not represent impulsive behavior. The fourth circuit affirmed the LWOP sentence.

The seventeen-year-old defendant shot and killed a homeless crack addict in *State v. Smoot*, 13-453 (La.App. 5 Cir. 1/15/14), 134 So.3d 1, *writ denied,* 14-297 (La. 9/12/14), 147 So.3d 704. The trial court noted the defendant came from a broken home, was raised by his grandfather, and had received psychiatric treatment and counseling while he lived in group homes and Boys Town from the age of twelve to fifteen. The defendant was serving a sentence for possession of cocaine with the intent to distribute at the time of his murder trial. He also had a prior arrest for second degree murder, but the charge was refused when witnesses would not testify. The trial court noted the particularly heinous nature of the crime and found the defendant's youth to be the only mitigating circumstance. The fifth circuit affirmed the sentence.

****41** In *State v. Brooks*, 49,033, p. 1 (La.App. 2 Cir. 5/7/14), 139 So.3d 571, 573, *writ denied,* 14-1194 (La. 2/13/15), 159 So.3d 459, the defendant was four months away from turning eighteen and a member of one of two gangs who "had long been having a turf battle" over an apartment complex. He fired an assault rifle at rival gang members as they ran away from him and his brother, who was firing a pistol. The victim was a fifteen-year-old innocent bystander. Evidence indicated the fatal shot may have been fired from a handgun rather than from the assault rifle the defendant fired. The defendant showed no remorse or explanation for the "senseless murder" and failed to comprehend that he had escalated the situation and endangered many lives. *Id.* at 575.

The defendant's mother had drug problems and was frequently incarcerated; his father had not been involved in his life and sold and used drugs. The defendant had problems in school and dropped out at age fourteen. The fifth circuit affirmed the trial court's imposition of a LWOP sentence.

On the other hand, in 1994, the juvenile defendant pled guilty to second degree murder in *State v. Young*, 18-564 (La.App. 1 Cir. 11/5/18), 2018 WL 5785260 (unpublished opinion), *writ denied,* 18-1968 (La. 5/20/19), 271 So.3d 201. He and other occupants of a vehicle had opened fire and killed a bicyclist. At the defendant's *Miller* hearing, the trial court resentenced the defendant to life imprisonment with the possibility of parole pursuant to La.Code

Crim.P. art. 878.1 and La.R.S. 15:574.4(G).

In this case, we find Defendant has a great advantage over the defendants denied parole eligibility in the cases discussed above by virtue of his thirty-five-year history of model behavior. While Defendant's crimes seem every bit as heinous as the cases denying parole eligibility, he has the benefit of history that has shown tremendous evidence of rehabilitation. Defendant has compiled a stellar, ****42** model, and exemplary prison record. None of the evidence offered at the resentencing hearing suggested Defendant has not been rehabilitated. Again, the Supreme Court emphasized that "[t]he opportunity for release will be afforded to those who demonstrate the truth of *Miller's* central intuition—that children who commit even heinous crimes are capable of change." *Montgomery*, 136 S.Ct. at 736. The Supreme Court held in *Miller* that:

> ***23** [C]hildren are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, ... 'they are less deserving of the most severe punishments.' ...
>
> ....
>
> That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."

Miller, 567 U.S. at 471, 479-80, 132 S.Ct. 2455, (citing *Roper v. Simmons*, 543 U.S. 551, 573, 125 S.Ct. 1183, 1197, 161 L.Ed.2d 1 (2005), and *Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 2026-27, 176 L.Ed.2d 825 (2010)). *Miller* also found the "appropriate occasions for sentencing juveniles to the harshest possible penalty will be uncommon." *Miller*, 567 U.S. at 479, 132 S.Ct. 2455. We find that Defendant's prison record and evidence of rehabilitation have demonstrated he is not irreparably corrupt.

Defendant presented evidence that the brains of juveniles are not mature at the point that he committed these murders. He presented evidence of a traumatic physical and sexual assault a few months prior to these murders that possibly increased feelings of resentment and colored his judgment.

[7] [8]None of this evidence excuses or condones Defendant's crimes. However, it does show Defendant has matured in prison, has demonstrated model behavior in spite of a most difficult environment, has developed positive relationships, and has ****43** the opportunity for a successful future outside of prison if he is ever able to achieve parole. The standard of review in a sentencing matter is whether the trial court abused its discretion, and this court should not set aside Defendant's sentence absent an abuse of discretion. *Alridge*, 249 So.3d 260. Based on our review of the record, and in light of *Miller* and *Montgomery*, we conclude that the trial court abused its discretion in denying Defendant's motion to correct his illegal sentence. Accordingly, we reverse the trial court's judgment, and we resentence Defendant to two concurrent sentences of life imprisonment with the possibility of parole.

Because we have determined that the trial court abused its discretion in denying Defendant the opportunity for parole, we need not address Defendant's remaining assignments of error.

DECREE:

For the foregoing reasons, we find that the trial court erred in denying Defendant the opportunity for parole. Defendant has provided sufficient evidence to show he is not irreparably corrupt and is entitled to resentencing to two concurrent life sentences with the possibility of parole. Accordingly, we reverse the trial court judgment and resentence Mr. Aaron Hauser to two concurrent sentences of life imprisonment with the possibility of parole.

REVERSED.

Footnotes

[1] We note that our decision should not be interpreted as minimizing the seriousness of the horrendous crimes committed by Defendant; rather, our decision merely reflects the distinction that the current law now recognizes a difference between juveniles and adults who commit the crime of murder.

[2] The facts are taken from a composite of statements and discovery materials from the Beauregard Parish suit record in CR-1983-548 and of testimony elicited at the resentencing hearing. We believe a lengthy review of the facts is necessary because of the influence Defendant contends his background had on the crimes he committed.

[3] Because a number of people mentioned in this opinion bear the last name of "Hauser," we refer to them by their first names.

[4] Defense counsel stipulated to the admission of these statements.

[5] To avoid confusion, we refer to the court that accepted Defendant's plea and imposed his sentences as "the sentencing court" and to the court that presided over post-conviction proceedings as "the trial court."

[6] This motion was filed under seal.

[7] *Shaffer*, 77 So.3d 939, has now been superseded in part by the amendments and enactments to La.R.S. 15:574.4.

[8] Mr. Roller's testimony included the facts of his case. His earliest memories were of his father abusing his mother and of his own serious medical issues that resulted from living in a home with those traumatizing events. He was found to have a learning disability in the second grade, and he learned later "it's all related to trauma" that "can just retard certain areas."

When questioned about the murders, Mr. Roller testified he never really formally planned to commit them. He commented, "My anger toward my father had been building with his abuse. My stepmother was not really a part of this." He planned to go to his room, shut the door, and wait for them to leave. He "got scared of [his] father and thought, I can never make it down that hall, I'm going to get a gun and go to my room." He still could not "make it down the hall[,]" and he went into his bathroom, where he sat in the dark. He shot his stepmother when she turned on the bathroom light and screamed; he exited the bathroom and was trapped by his father at the end of the hall. He

shot his father also. Mr. Roller said he got the gun because he "was just terrified." The entire unplanned episode happened "awfully fast." His attorney, a close family friend, told him to plead guilty to second degree murder with sentences of life without parole, and he did.

The trial court allowed Mr. Roller to withdraw his guilty pleas to second degree murder and plead guilty to manslaughter. Additionally, the sister of Mr. Roller's stepmother and others in her family spoke in his favor, and the State did not oppose the motion. Mr. Roller served twenty-seven years of his original LWOP sentences in prison. This court has not adopted the practice of reducing a *Miller* defendant's charge to manslaughter. *See State v. Comeaux*, 17-682 (La.App. 3 Cir. 2/15/18), 239 So.3d 920, *writ denied*, 18-428 (La. 1/14/19), 261 So.3d 783.

[9] The defendant filed a petition for *certiorari* with the Supreme Court, which distributed the case for conference on October 1, 2019. The Court has not yet indicated whether it will grant or deny the writ application.

CR-548-83

STATE OF LOUISIANA	:	36TH JUDICIAL DISTRICT COURT
VS.	:	PARISH OF BEAUREGARD
AARON G. HAUSER	:	STATE OF LOUISIANA
FILED: December 20, 2018	:	DEPUTY CLERK OF COURT

Ruling

This matter came before the Court on April 26, 2018 and July 6, 2018 for a hearing on the State's Notice of Intent to Seek Sentence of Life Imprisonment Without Parole Pursuant to LSA-C.Cr.P. art. 878.1 and Act No. 277 of the 2017 Regular Legislative Session filed on September 19, 2017; the Defendant's Pro Se Incorporate Motion and Memorandum to Correct Illegal Sentence under LSA-C.Cr.P. Articles 882 and Order Setting Date for Sentencing Hearing filed on July 13, 2016; and, the Judgment rendered in the matter entitled, *Hauser v. Cain,* No. 2:14-CV-02654, 2016 WL 4703509 (W.D. La. 9/2/16), remanding the case to this Court for resentencing pursuant to the constitutional principles set forth in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. –, 136 S.Ct. 718 (2016) [hereinafter *Montgomery I*]. Present in Court on both days were the Defendant, Aaron G. Hauser; La'Ketha Holmes, on behalf of the Defendant; and Richard Morton, on behalf of the State of Louisiana.

The issue before the Court is whether the Defendant's sentence of life imprisonment for two murders he committed on July 4, 1983 when he was 17 years old should be served with or without parole eligibility. In *Miller*, the United States Supreme Court held that mandatory life sentences without the possibility of parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on "cruel and unusual punishment." In *Montgomery I*, the Supreme Court further held that the rule announced in *Miller* applied retroactively to cases on collateral review. *Montgomery I,* 136 S.Ct. 732–37.

Previously, on September 27, 2017, the State in its Memorandum in Opposition to Defendant's Motion for a Reliable Sentencing Hearing objected to this Court holding a *Miller* hearing. The State argued that the United States Supreme Court's holdings in *Miller* and *Montgomery I* do not apply to the Defendant's case because the Defendant entered into a negotiated plea agreement to serve life without parole in exchange for the State not seeking the death penalty. On January 24, 2018, this Court ruled that, in the interest of judicial economy, a hearing would be held pursuant to *Miller* and *Montgomery I* and Article 878.1 of the Louisiana Code of Criminal Procedure, but deferred ruling on

the State's procedural objection until after the hearing was held. The hearing now being concluded, the Court will consider the State's procedural objection.

State's Procedural Objection

The State argues that Defendant's case is not subject to the holding in *Miller* because the Defendant agreed to serve a sentence of life without the possibility of parole. The Court agrees with the State that the Defendant is not entitled to a hearing under *Miller*. *Miller* does not categorically bar a sentence of life without parole for a person who was under 18 at the time he or she committed murder. *Miller* only proscribes **mandatory** life sentences without parole. *Miller*, 567 U.S. at 483 ("Our decision does not categorically bar a penalty for a class of offenders or type of crime–as for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process–considering an offender's youth and attendant characteristics–before imposing a particular penalty."); *State v. Williams*, 2012-1766 (La. 3/8/13), 108 So. 3d 1169, 1169 ("[T]he *Miller* court did not establish a categorical prohibition against life without parole for juveniles. Instead, the court required that a sentencing court consider an offender's youth and attendant characteristics as mitigating circumstances before deciding whether to impose the harshest possible penalty for juveniles.").

As stated by the Louisiana Supreme Court in *State v. Karey*, 232 So.3d 1186 (La. 6/29/2017), "As a general matter, in determining the validity of … plea agreements, the courts generally refer to analogous rules of contract law, although a defendant's constitutional right to fairness may be broader than his or her rights under the law of contract." *State in Interest of E.C.*, 13-2483, p. 4 (La. 6/13/14), 141 So.3d 785, 787 (per curiam); *State v. Cardon*, 06-2305, p. 1 (La. 1/12/07), 946 So.2d 171, 171–72 (per curiam); *State v. Givens*, 99-3518, p. 14 (La. 1/17/01), 776 So.2d 443, 455; *State v. Louis*, 94-0761 (La. 11/30/94), 645 So.2d 1144, 1148–49; *State v. Lewis*, 539 So.2d 1199, 1204-05 (La. 1989); *State v. Nall*, 379 So.2d 731, 734 (La. 1980). See also *United States v. Ringling*, 988 F.2d 504, 506 (4th Cir. 1993) ("Plea bargains rest on contractual principles, and each party should receive the benefit of its bargain. Yet, the analysis of the plea agreement must be conducted at a more stringent level than in a commercial **5 contract because the rights involved are generally fundamental and constitutionally based."). Although *Karey* involved holding the State to the terms of the agreement not to prosecute, the reciprocal principals of holding both sides to a plea agreement would equally bind the Defendant in this case.

In the instant matter, the Defendant entered into a plea agreement with the State and expressly agreed to serve a sentence of life without the possibility of parole in exchange for the State not seeking

the death penalty. Because the sentence of life imprisonment without parole was part of this negotiated plea agreement, the Court finds the sentence was not mandatory and is, therefore, outside of the holding in *Miller*.

The sentence in this matter was not mandatory in two important respects. First, it was a plea bargain agreed to by the defendant. Second, the proposed plea agreement had to be considered by the court to determine whether or not the court would accept the proposed plea as appropriate. The judge in the plea colloquy clearly explained that if the guilty pleas were made by the defendant, and accepted by the Court, under the law, he would have no choice but to sentence the defendant to life without parole. Although once the plea was entered by the defendant, and accepted by the court, the only possible sentence was one of life without parole; the decision, by both the defendant to enter the plea and by the Court to accept the plea, and the process that both the defendant and the Court undertook to reach those decisions, were neither one, mandatory.

The defendant had the choice of not entering a plea agreement and could have gone to trial. Both *Miller* and *Montgomery I* involved cases were the defendants went to trial and were convicted and a mandatory sentence of life without parole imposed. Likewise, the defendant's desire to enter the plea still had to be reviewed by the Court before it was accepted. It is significant to note that at the time of reaching the decision to enter the plea agreement on April 26, 1984, the defendant was no longer a juvenile but was an eighteen year old adult. The review by the Court in its discretion of whether or not to accept the plea from the defendant, would have of necessity included consideration of the mitigating characteristics of the offender's youth. This dual process of knowingly and voluntarily entering the plea by the defendant, and review by the Court as to whether or not the Court would accept the plea, meets the process requirements of *Miller* and *Montgomery I*.

The Court acknowledges that this issue has been inconsistently decided by some courts and is the subject of writ petitions currently being considered by the United States Supreme Court. *See,* Petition for a Writ of Certiorari, *Newton v. Indiana*, No. 17-1511 (where Newton is seeking review of the State of Indiana's holding that "the mandate of *Miller* and *Montgomery* does not apply to the narrow circumstance . . . where a juvenile defendant voluntarily enters into a plea agreement to serve LWOP." *Newton v. State*, 83 N.E. 3d 726, 744–45 (Ind. Ct. App. 2017) *trans. denied*, 95 N.E. 3d 77 (Ind. 2017)); Petition for a Writ of Certiorari, *Mathena v. Malvo*, No. 18-217 where the State is seeking review of the Fourth Circuit Court of Appeals' holding that Malvo's plea agreement does not "preclude[] him from obtaining habeas relief under the new rule in *Miller* . . . and he now has the

retroactive benefit of new constitutional rules that treat juveniles differently for sentencing." *Malvo v. Mathena*, 893 F.3d 265, 277 (4th Cir. 2018)).

The Fourth Circuit specifically noted that Malvo's "plea agreement . . . does not provide any form of *express* waiver of Malvo's right to challenge the constitutionality of his sentence in a collateral proceeding in light of future Supreme Court holdings" and that Malvo did not expressly waive any "right to pursue future habeas relief from his punishment." *Id.* The Fourth Circuit found the case of *Brady v. United States*, 397 U.S. 742 (1972), also relied upon by the State in the instant matter, to be inapplicable to Malvo's case because Brady sought to use a new sentencing law to have his guilty plea set aside as involuntary when the penalty which induced the plea was later found unconstitutional. *Malvo*, 893 F.3d at 276. The Fourth Circuit contrasted this with what Malvo is seeking – to **challenge his sentence** as unconstitutional and not the guilty plea itself. *Id.*

This Court notes that the Defendant in the instant matter, like Malvo, was not advised as part of his plea colloquy that he was waiving any rights to challenge the constitutionality of his sentence, and similarly, the Defendant is not attacking his conviction or guilty plea. However, the sentencing judge took great pains to ensure the Defendant was entering into the plea agreement freely, knowingly, and voluntarily. The sentencing judge advised the Defendant that it was up to the Court to accept or reject the plea agreement, but that entering a plea of guilty would necessitate, under then-existing law, that the Defendant be sentenced to life imprisonment without parole. The Defendant knowingly entered into this agreement. Although this area of the law remains unsettled, this Court believes the Defendant received the benefit of his negotiated plea agreement. Specifically, the Defendant avoided a possible death sentence by agreeing to serve life in prison without the possibility of parole.

That said, in the wake of the decisions in *Miller* and *Montgomery I*, the Louisiana Legislature enacted Article 878.1 of the Louisiana Code of Criminal Procedure which provides, in relevant part:

> If an offender was indicted prior to August 1, 2017, for the crime of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense and a hearing was not held pursuant to this Article prior to August 1, 2017, to determine whether the offender's sentence should be imposed with or without parole eligibility, the district attorney may file a notice of intent to seek a sentence of life imprisonment without the possibility of parole within ninety days of August 1, 2017. If the district attorney timely files the notice of intent, **a hearing shall be conducted** to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to R.S. 15:574.4(G). If the district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to R.S. 15:574.4(E) without the need of a judicial determination pursuant to the provisions of this Article. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.

La. C.Cr.P. art. 878.1(B)(1) (emphasis added). Pursuant to the rules of statutory interpretation, when a law is clear and unambiguous, no further interpretation is permitted. In the instant matter, the Defendant was indicted prior to August 1, 2017 and a hearing to determine parole eligibility was not held at that time. The court in the plea colloquy specifically advised the Defendant that if the court accepted the plea agreement, the only possible sentence was life imprisonment without the possibility of parole. On September 19, 2017, the District Attorney for Beauregard Parish timely filed notice of intent to seek a sentence of life imprisonment without parole. Under these circumstances, the statute is clear and unambiguous that a **hearing shall be conducted** to determine whether the Defendant's life sentence shall be imposed with or without parole eligibility.

Accordingly, the State's procedural objection is **GRANTED** in so far as the direct application of *Miller* and *Montgomery I*, but is **OVERRULED** in so far as La. C.Cr.P. art. 878.1, and the Court shall proceed to consider the evidence from the hearing on April 26, 2018 and July 6, 2018 pursuant to Article 878.1 of the Louisiana Code of Criminal Procedure.

Ruling on Merits

The hearing commenced on April 26, 2018. After hearing from several State witnesses, the Court recessed the matter. The hearing was concluded on July 6, 2018 at which time the Court heard from several witnesses for the Defendant. By joint stipulation, the State filed voluminous documentary evidence into the record. Defense counsel objected to admitting exhibits 16 and 17 pertaining to the divorce of the Defendant's parents; however, the Court overruled the objection and allowed the documents to be admitted. The Defendant offered documentary evidence which was admitted without State objection.

After the conclusion of testimony on July 6, 2018, the Court left the record open for ten days for filing of any supplemental documentary evidence. The Court granted the Defendant twenty days in which to file a brief and granted the State ten days thereafter to file its response. The Court further granted the Defendant five days thereafter to file any reply to the State's response.

On August 14, 2018, the Defendant filed his Memorandum in Support of Re-Sentencing. On August 30, 2018, the State filed its Memorandum Following Sentencing Hearings. The Defendant did not file a reply to the State's memorandum.

I. Purpose of the Hearing

The sole purpose of this hearing is to determine whether the Defendant's sentence shall be imposed with or without parole eligibility. La. C.Cr.P. art. 878.1(D). In keeping with the sentiments expressed in *Miller*, the Legislature has noted that a determination that a defendant "is not entitled to

parole eligibility should normally be reserved for the worst offenders and the worst cases." La. C.Cr.P. art. 878.1(D). The statute also requires that the Court "state for the record the considerations taken into account and the factual basis for its determination." *Id.* This Court will do so.

The legislature has instructed that "the prosecution and defense shall be allowed to introduce ***any*** aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender." La. C.Cr.P. art. 878.1(C) (emphasis added). The Court interpreted this admonition liberally, and because this hearing is not to determine guilt, but rather to determine the sentence, the Court admitted, and has considered, evidence which may not have been admissible at trial.

The Court notes that the Louisiana Legislature specifically enacted Article 878.1 as a response to the United States Supreme Court's decisions in *Miller* and *Montgomery I*. As such, the Court finds those cases and their progeny, although not directly controlling of this case as explained previously, to be instructive, under the directive of subparagraph C of Article 878.1 of the Louisiana Code of Criminal Procedure to consider "such other factors as the court may deem relevant." The United States Supreme Court has found that "juveniles have diminished culpability and greater prospects for reform . . . [making them] less deserving of the most severe punishments." *Miller*, 567 U.S. at 471. Specifically, the Court noted that children lack maturity and have an "underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking." *Id.* (internal quotations omitted). The Court referenced an amicus brief filed by the American Psychological Association which stated "[i]t is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance." *Id.* at 472 n.5. The Court noted that even when a juvenile offender commits a terrible crime, "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences." *Id.* at 472. Sentences "should be graduated and proportioned to both the offender and the offense," *id.* at 469, and when sentencing a juvenile, courts must "consider the 'mitigating qualities of youth.'" *Id.* at 476.

Resentencing of a juvenile already serving a life sentence without parole should be conducted in the same manner as one convicted and sentenced post-*Miller*. *State v. Montgomery*, 2013-1163 (La. 6/28/16), 194 So. 3d 606, 608 [hereinafter *Montgomery II*]. The Louisiana Supreme Court has instructed that the sentencing guidelines previously enacted by the legislature in response to *Miller* are applicable to the now-mandated resentencing hearings. *Id.* Although *Miller* requires a hearing where the offender's "'youth and attendant characteristics' are considered," it does not categorically bar a sentence of life without parole for a juvenile offender. *Montgomery I,* 136 S. Ct. at 735. Indeed,

"a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Id.* at 733. As Justice Crichton noted, "the district courts are faced with one and only one task here: to distinguish between 'the rare juvenile offender whose crime reflects irreparable corruption' and 'the juvenile offender whose crime reflects unfortunate yet transient immaturity.'" *Montgomery II*, 194 So. 3d at 609 (Crichton, J., concurring).

Courts around this state have upheld sentences of life without parole for certain juvenile offenders. *State v. Reese*, 2013-1905, p. 2, 5 (La. App. 1 Cir. 6/25/14), 2014 WL 3843859, *writ denied*, 2014-1592 (La. 3/6/15), 161 So. 3d 13 (finding sentence of a 16-year-old to life without parole was not excessive where the trial court complied with *Miller* and considered extensive testimony from mental health experts that the defendant "showed no remorse," was "predatory," and "continued to have notions of wanting to kill again"); *State v. Williams*, 50,060, p. 5, 8–9 (La. App. 2 Cir. 9/30/15), 178 So. 3d 1069, 1072–73, 1075, *writ denied*, 2015-2048 (La. 11/15/16), 209 So. 3d 790, (affirming sentence of life without parole for a 17-year-old who had a "lengthy discipline record while incarcerated" and bragged about his crime); *State v. Fletcher*, 49,303 p. 28 (La. App. 2 Cir. 10/1/14), 149 So.3d 934, 950, *writ denied*, 2014-2205 (La. 6/5/15), 171 So.3d 945, *cert. denied*, 136 S. Ct. 254 (2015) (upholding sentence of life without parole for 15-year-old whose "only genuine remorse . . . was that he could not prolong the suffering of his parents as he murdered them," who "still aspire[d] to kill his sister," and whom mental health experts found would never "be amenable to rehabilitation"); *State v. Dove*, 2015-0783, p. 35–36 (La. App. 4 Cir. 5/4/16), 194 So. 3d 92, 115–16, *writ denied*, 2016-1081 (La. 6/28/17), 222 So.3d 48, *cert. denied*, 138 S.Ct. 1279 (2018) (finding sentence of life without parole for 16-year-old offender was appropriate where the presentence investigation revealed that the defendant had no respect for the law, showed no remorse, was a member of a known violent gang, and was charged with second-degree battery while incarcerated and on trial in the homicide case).

Indeed, even if a juvenile offender is determined to be parole eligible, nothing in the Eighth Amendment requires a juvenile offender be released during his natural life. *Graham v. Florida*, 560 U.S. 48, 75 (2010) (noting that juveniles "who commit truly horrifying crimes . . . may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives"). The *Graham* Court specifically dealt with juveniles convicted of non-homicide offenses. As the Third Circuit noted, "a juvenile who commits a non-homicide offense . . . is only promised the possibility of being released on parole. It stands to reason that a juvenile who commits a *homicide* offense . . . should be granted

no greater relief." *State v. Doise*, 15-713, p. 10 (La. App. 3 Cir. 2/24/16), 185 So. 3d 335, 342 *writ denied*, 2016-546 (La. 3/13/17), 216 So.3d 808.

As such, this Court is only tasked with determining whether the Defendant should be granted an *opportunity for parole consideration*. The Court must evaluate certain factors in making that determination.

II. Factors to be Considered

The United States Supreme Court stated that a sentencing court must consider:

(1) a juvenile offender's chronological age and its hallmark features including:
   a. immaturity;
   b. impetuosity; and,
   c. failure to appreciate risks and consequences;
(2) the offender's family and home environment; and,
(3) the effect family or peer pressure may have had on the offender.

Miller, 567 U.S. at 477–78. The Court also instructed that a sentencing court may consider:

(1) the facts and circumstances of the homicide;
(2) the extent of the offender's participation in the crime;
(3) whether the offender might have been charged with and/or convicted of a lesser offense if not for the incompetencies associated with his youth, including:
   a. his inability to deal with police officers and/or prosecutors (such as on a plea agreement); or,
   b. his incapacity to assist his attorneys.

Id.

The Louisiana Legislature requires a sentencing court to consider any aggravating or mitigating evidence relevant to the offense or the character of the offender. La. C.Cr.P. art. 878.1(C). This includes:

(1) the facts and circumstances of the crime;
(2) the offender's criminal history, level of family support, and social history; and,
(3) **such other factors as the court may deem relevant**.

Id. (emphasis added).

The Louisiana Supreme Court has stated that the general sentencing guidelines provided in La. C.Cr.P. art. 894.1 may be used if deemed relevant by a trial court. *Montgomery II*, 194 So. 3d at 608–09. Of the factors listed, this Court finds the following factors to be relevant to the instant case:

(1) whether the defendant is likely to commit another crime;
(2) whether a lesser sentence would deprecate the seriousness of the defendant's crime;
(3) whether the defendant knowingly created a risk of death to more than one person;
(4) whether the offense resulted in significant permanent loss to the victim or his or her family;
(5) whether the offender used a dangerous weapon in the commission of the crime;
(6) whether the offense involved multiple victims for which separate sentences have not been imposed;
(7) whether the offender was involved in similar offenses;
(8) where more than one person was involved in the crime, whether the offender was a leader or occupied the position of organizer;
(9) whether the defendant contemplated that his criminal conduct would cause or threaten serious harm;

(10) whether there were substantial grounds tending to excuse the defendant's criminal conduct;
(11) whether the defendant had a history of prior criminal conduct; and,
(12) whether the defendant's criminal conduct was the result of circumstances not likely to recur.

La. C. Cr.P. Art. 894.1. Additionally, the Louisiana Supreme Court cited with approval factors codified in a Florida statute. *Montgomery II*, 194 So. 3d at 608–09 (quoting Fla. Stat. § 921.1401(2) (2014)). That statute provides that a sentencing court should consider:

(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.

Fla. Stat. § 921.1401(2)

Further, this Court has exhaustively searched the laws across the United States for additional guidance on factors to consider in determining if the Defendant in the instant matter should be granted an opportunity for parole consideration. The Court specifically takes note of the following additional factors:

(1) whether the defendant poses a threat to the safety of the public or an individual;
(2) the defendant's degree of participation in the murder;
(3) the defendant's remorse;
(4) the defendant's acceptance of responsibility;
(5) the severity of the crime, including the number of victims;
(6) the capacity of the defendant to appreciate the criminality of his actions;
(7) the likelihood of the defendant committing future offenses;
(8) statements by the victim's family;
(9) the defendant's potential for rehabilitation including evidence of his efforts towards, or amenability to, rehabilitation;
(10) the defendant's medical and trauma history; and,
(11) the degree of criminal sophistication exhibited by the defendant.

See, Iowa Code § 902.1(2)(b)(2); Mo. Rev. Stat. § 565.033(2); Neb. Rev. Stat. § 28-105.02(2); N.C. Gen. Stat. § 15A-1340.19B(c); 18 Pa.C.S.A. § 1102.1; W. Va. Code § 61-11-23(c).

Although some facts in this case will necessarily overlap some of these factors, the Court will explicitly examine the factors in light of the evidence before it.

A. Nature and Circumstances of the Crime

Justice Sotomayor has cautioned when evaluating the nature and circumstances of an offender's crime, "the gruesomeness of a crime is not sufficient to demonstrate that a juvenile offender

is beyond redemption" and "even a heinous crime committed by a juvenile" is not necessarily "evidence of irretrievably depraved character." *Adams v. Alabama*, 136 S. Ct. 1796, 1800 (2016) (Sotomayor, J., concurring). Article 878.1(D) of the Louisiana Code of Criminal Procedure also provides that parole eligibility should not be allowed "for the worst offenders and the worst cases." The Court has considered the evidence before it with those admonitions in mind.

According to information gathered by detectives, the Defendant purchased the gun used in the murders from the Hill County Pawn Shop on July 2, 1983. Two other firearms had been purchased on June 27, 1983. Because he was not old enough to make the purchases, the Defendant paid William Kinkade, who was 26 at the time, to purchase the weapons. Then, on July 4, 1983, the Defendant took the weapons and he and Kinkade drove approximately seven hours from Kerrville, Texas to his father's home in DeRidder, Louisiana with the alleged intent of retrieving some of the Defendant's property and/or robbing his father. In a statement to law enforcement after his arrest, the Defendant admitted that he and Kinkade had planned to rob his father's home and they had been together when they purchased some rubber surgical gloves to wear so that they would not leave fingerprints.

The Defendant parked approximately one mile away from the house. Taking the gun with him, the Defendant and Kinkade walked through the woods in the very early hours of the morning, and hid behind some outbuildings watching the house. The Defendant watched his father leave before the Defendant approached the house. The Defendant testified that he believed no one was home because his sister, Robin, had told him their stepmother, Joan Hauser, would be gone because Joan and their father were having some problems. He further testified that he did not see his stepmother's car.

Carrying the .223 rifle, the Defendant approached the home. Upon reaching the door to the house, the Defendant testified he could see Joan through a window standing in her bedroom. He proceeded to enter the home whereupon he then shot his stepmother twice with the .223 rifle. The Defendant testified that Joan was facing away from him and did not see him when he shot her. According to the autopsy, Joan was shot in the right posterior chest, so it is possible she did not see the Defendant when he fired that shot, however, the autopsy also revealed Joan was shot in her right cheek, just below her eye. Additionally, Kinkade told law enforcement officers that before he ran away from the house, he heard a woman scream. This indicates to the Court that Joan did, in fact, see the Defendant at some point. The autopsy noted that either shot could have been fatal, but the wound of the head was more severe. The Court does not know which shot occurred first, but surmises from

the evidence that the Defendant first pointed the rifle at Joan whereupon she screamed, he then shot her in the chest, and then shot her the second time in the right cheek causing her death.

Crime-scene photos show Joan lying on her back on the floor of her bedroom in a pool of blood. Her shoes are laying near her feet. A wastepaper basket is turned on its side and her right foot is laying in the opening. Her glasses are on the floor near her right foot. Drops of blood are visible on her front, left thigh. Smudged blood appears on the inside of her left thigh near her knee and on the inside of her right calf. Blood also appears on the surface of the sewing table near the bed. Two shell casings were found on the floor, with one resting against the door frame at the entrance to the bedroom.

After shooting Joan, the Defendant then walked to his old bedroom where he found his stepbrother, John Leidig, apparently still lying in bed. The Defendant shot John twice with the .223 rifle. According to the autopsy, John was shot in the right forearm and right side of his head. The crime-scene photos show John lying in bed, under a blanket, and bleeding from his head and right arm. Two shell casings were found near the foot of the bed; one was resting in a baseball glove which was lying on the floor. A slight amount of blood splatter is on one pillow and the headboard. More significant blood splatter is seen on the wall near the bed, and a substantial amount of pooled blood appears on the floor. The evidence presented to the Court offers no explanation for the amount of blood on the wall and floor observed in the photos.

According to the autopsy, the bullet that hit John's right arm did not fracture the bones and exited through his muscle tissue. The report indicates the bullet entered on the undersurface of the arm between the wrist and elbow. An exit wound was noted on the radial surface of the forearm at about the same location as the entrance wound. According to the police report, a bullet was recovered from the wall behind the headboard of the bed. The Court notes it is likely this was the bullet which struck and exited John's arm.

According to the autopsy, John was also shot in the right side of his head. His skull was significantly fractured and fragments of the bullet were recovered. There were secondary lacerations of John's skull which the autopsy stated were consistent with a fragmented bullet exiting the scalp in multiple pieces. It appears likely to the Court that this wound, being far more significant than the wound to John's arm, was the source of the pooled blood on the floor. It also appears likely to the Court that based on the amount of blood on the floor and John's position in the bed when police found him, the Defendant moved John's body after he had killed him. This belief is bolstered by the lack of blood on the blanket covering John and the pillow behind his head. It appears as if the defendant

pulled the covers up around John as there is no blood on top of the covers indicating that John did not pull the covers up to his neck himself. It also appears that the defendant placed a spent shell casing in the palm of John's baseball glove. These appear to be the deliberate actions of a calculated killer sending a cold-blooded message to the victim and/or his family, not the actions of an impulsive juvenile. This is supported by the fact that both Joan and John were each shot a second time, execution style, in the head.

After committing the murders, the evidence reveals that the Defendant then spent some time looking through the house for some of his things and drank Kool-Aid out of the refrigerator. (The Court notes that the Defendant testified he did not recall drinking Kool-Aid.) When the Defendant left the house, he looked for Kinkade. When he did not see him, the Defendant took a car from the house and drove back to where he had parked his truck. The Defendant then drove his truck back to Kerrville, Texas where he was later arrested.

The Court finds both of these murders were heinous, particularly gruesome, and completely senseless. This factor weighs heavily in favor of the State. They appear to have been committed with forethought, malice, and cruelty. However, the Court acknowledges Justice Sotomayor's admonition and the inquiry into whether the Defendant should be entitled to parole eligibility cannot end with a finding that the crime was heinous and gruesome.

B. Juvenile Offender's Chronological Age, and Hallmark Characteristics

The Defendant was born on October 13, 1965. At the time of the murders, the Defendant was 17 years, 8 months, and 21 days old, or just over 3 months shy of turning 18. The Court contrasts this with the age of the defendants in *Miller* who were only 14 years old when they committed murder. *Miller*, 567 U.S. at 465. In the instant matter, had the Defendant committed these murders a mere 100 days later, he would have been 18 years old and would have no opportunity to have this Court now reconsider his sentence.

The Court heard expert testimony from Robert Louis Lowrey, Jr. and Terry Lane relative to the brain development of adolescents. Further, the Court reviewed the amici briefs submitted in *Miller* and acknowledges that scientific studies have shown how juvenile brains differ from adult brains, and that a juvenile brain is not fully developed until the person reaches his or her mid-twenties. One expert, Mr. Lane, testified before this Court that it is now believed that the brain does not fully mature until one is nearly 30 years old. The Court heard testimony that different areas of the brain grow and mature at different rates and that the prefrontal cortex, the area of the brain responsible for impulse control and higher-order decision-making, develops slower than other areas. The result is that juveniles, up

until they reach at least their mid-twenties, are more controlled by the pleasure and reward centers of their brains and are more likely to engage in high-risk behavior as a result. Those facts militate in favor of the Defendant; however, the Court reiterates that had the Defendant been just a little older, even though the science shows he may have been no more mature, he would not have this opportunity to have his sentence reconsidered.

As to the "hallmark characteristics" of immaturity, impetuosity, and failure to appreciate risks and consequences, the Court notes that the Defendant quit high school in the ninth grade, and according to his testimony at his original sentencing hearing, obtained his GED a few months later. In April of 1983, at the age of 17, the Defendant, with his mother's permission, enlisted in the Navy. These decisions do not appear to the Court to be those of an immature juvenile.

The Court also believes that these murders were not the result of impetuousness. As stated above, the Defendant arranged for the purchase of the gun used in the murders well in advance. He enlisted the assistance of an accomplice. He drove approximately seven hours from Texas to DeRidder. He parked his truck approximately one mile away from the house and walked the balance of the distance carrying the .223 rifle with him. He hid behind outbuildings watching his father's house, waiting until his father left before approaching the house. Further, upon reaching the door to the house, the Defendant testified he could see Joan through the window. The Defendant then chose to enter the house.

The Defendant did not arm himself after entering the house; he carried the weapon with him. The Defendant was not taken by surprise by Joan or John; he testified he saw Joan before entering the house. This behavior appears planned and the Court does not believe that these murders were the result of an impetuous act by an immature juvenile. The victims were both shot execution style in the head, not the result of impulsivity or surprise, but deliberate and calculated action.

This same behavior, however, may indicate that, as to the third hallmark of youth, the Defendant was unable to appreciate the risks and consequences of his actions. Perhaps the Defendant left Texas planning to cause harm. The Defendant testified that he blamed his father for all of the bad things that had happened to the Defendant, including a sexual assault he allegedly suffered when he was in the Navy, and that he wanted to strike back at his father. Based on the scientific evidence of juvenile brain development, it is possible that the Defendant's underdeveloped prefrontal cortex interfered with his ability to think or reason beyond the more developed reward center's desire to strike back at his father.

This belief may be further supported by the fact that after murdering Joan and John, the Defendant remained in the house looking for his rock and coin collections and took time to drink Kool-Aid from the refrigerator. These could be the act of a juvenile who was unable to appreciate the heinous nature of the acts he just committed, although these could also be the acts of a cold-blooded killer who had no regard whatsoever for his victims.

C. Extent of Defendant's Participation in the Murders, Degree of Criminal Sophistication, and Effect of Peer Pressure

The Defendant testified that he was the one who murdered both Joan and John by shooting them. The Defendant enlisted the assistance of an accomplice, William Kinkade, and arranged for the purchase of the murder weapon in advance of the murders. He also purchased rubber surgical gloves to not leave fingerprints. The defense pointed out that Kinkade was 26 at the time, several years older than the Defendant. The Court acknowledges an older peer can exert significant influence on a younger individual, often prompting the younger individual to engage in conduct he or she otherwise would not.

In his statements to law enforcement, Kinkade claimed the Defendant was the one who planned to go to DeRidder and rob his father. Kinkade did not testify before this Court, and the Court finds his statements to law enforcement were often contradictory and self-serving. As such, the Court cannot give them great weight. The Defendant, however, admitted that he was the one responsible for these murders.

In a statement to law enforcement, the Defendant admitted he and Kinkade planned to rob his father. As previously noted, in his testimony before this Court, the Defendant stated that he wanted to strike back at his father. Despite the difference in their ages and the fact that the Defendant was the younger of the two, the Court finds that the Defendant was the primary instigator and organizer of the crime, or at the very least, planned the events and circumstances which led up to the ultimate murders. It is significant also that Kincade did not go into the house and upon hearing the victim's screams and the gun shots, he ran to a neighbor's residence to alert others.

D. Defendant's Background, Including His Family, Home, and Community Environment; Medical and Trauma History; Intellectual Capacity; and Mental and Emotional Health at the Time of the Offense

Testimony was elicited relative to the Defendant's family life prior to the murders. Additionally, and over the objection of defense counsel, the State introduced records from the divorce proceedings between George and Frances Hauser, the Defendant's father and mother. The Court also considered a letter introduced by the Defendant written by the Defendant's sister, Robin Hauser.

The Court finds that the Defendant's parents, George and Frances Hauser, were married in 1953. The Defendant's brother, Joseph Martin, was born on October 13, 1954. His sister, Robin, was born on September 16, 1963, and the Defendant was born on October 13, 1965. George Hauser testified that he was not a "lovey-dovey" sort of man, but "appreciated children." George was involved in a family farm business and his brother, the Defendant's uncle, had three children around the Defendant's age, who also lived on the property. George did not see the Defendant play with other children on a daily basis. He stated that the Defendant had a bike and that country kids learn how to play on their own. He also noted that the Defendant had chores to do.

The Defendant's sister wrote a letter to the Court dated June 30, 2018. She stated that the Defendant grew up as a typical child in the country. She noted the Defendant enjoyed fishing and riding dirt bikes. She stated that the Defendant spent many hours fishing, enjoyed nature and animals, as well as spending time with his dogs.

In 1977, Frances moved out of the family home and took Robin and the Defendant with her to live in Lake Charles. Martin was an adult at the time and was not living in the family home. Frances filed for separation from bed and board on August 19, 1977. On September 1, 1977, the court ordered that George be granted custody of the Defendant and Robin during the pendency of the suit. A judgment of separation from bed and board was rendered on November 21, 1977 wherein George was granted permanent physical custody of the Defendant and Robin. According to Robin, the Defendant was unhappy living with their father, and about a year later, on September 21, 1978, a judgment was entered granting physical custody of the Defendant to his mother pursuant to a joint motion and written agreement between George and Frances. Robin remained with her father at that time.

George filed a petition for divorce from Frances on December 1, 1978. The judgment of divorce was rendered on January 4, 1979. George married Joan Leidig on January 26, 1979. Thereafter, on August 7, 1979, pursuant to another agreement between George and Frances, a judgment was rendered awarding physical custody of Robin to Frances.

Joan moved into the family home after she and George married on January 26, 1979. The Defendant was already living in Texas with his mother. When asked about the Defendant's relationship with his stepmother, George testified that there was not a loving relationship between the two; the Defendant was a kid with a strange woman. The Defendant testified that he did not have a relationship with Joan.

George testified that he exercised visitation with the Defendant every other weekend when the Defendant was living with his mother in Lake Charles. The Defendant, however, denies that these visitations took place. After Frances relocated with the children to Texas, George testified he was not able to exercise visitation frequently. He also did not call or write to the children. The Defendant testified that after he went to live with his mother in Texas, his father had no communication with him.

Although the Defendant's family life as a child may not have been perfect, and it is quite possible the Defendant felt neglected or even unloved by his father, the Court finds no evidence of abuse or other such circumstances in his family life to explain or mitigate the Defendant's crimes. Further, the evidence before the Court indicates that the Defendant was of normal intelligence, had no physical or mental issues, and had never suffered any physical trauma while growing up.

That said, there is evidence in the record that the Defendant was allegedly the subject of a physical and sexual assault shortly after joining the Navy. A redacted report (NIS Action/Lead Sheet) from May 24, 1983 reveals the Defendant reported for training on April 25, 1983 and received a medical discharge on May 20, 1983 because of eyesight problems. The report indicates that on May 21, 1983, the Defendant reported to his recruiter in Kerrville, Texas that on April 28, 1983, three unknown male sailors beat him with a pipe, tied him to a bed, and sodomized him. Defendant allegedly told the recruiter that he did not report the incident earlier because he felt dirty and ashamed. The report indicates that at the time Defendant reported the attack, he still had a lump on his head and two fractured ribs.

The record also contains a redacted NIS Report of Investigation dated June 16, 1983 indicating that the Defendant's military medical records indicate he was examined on April 28, 1983 where it was noted the Defendant was undergoing severe personal stress relating to family problems, but nothing indicates he was treated for any type of assault. The Defendant's Company Commander was interviewed on June 1, 1983. He recalled that around May 1, 1983, the Defendant received several urgent messages to call home. The messages were received by the Duty Chaplain, and he counseled the Defendant after the calls to determine what the problem was. The Court notes that at this point in the report, there is a gap of three paragraphs. Defense counsel advised the Court that the copies provided to the State and Court were exactly as they were received from the Navy. The report stops in paragraph 4 at the point where the Defendant was responding to the Chaplain's inquiry concerning the nature of the urgent messages from home and then begins again in the middle of paragraph 7 discussing the assault. The Defendant's mother had apparently reported the incident to her pastor. The

report continues that the Chaplain met with the Defendant on May 1, 1983 and asked if he had been assaulted. The Defendant told the Chaplain he had not been assaulted and that his mother suffered from leg cramps that made her crazy and she was making up the assault. The Chaplain did not notice any bruises on the Defendant.

After the Defendant was discharged and back in Kerrville, he reported the incident to his recruiter and handwrote a statement describing the assault. The Defendant in his handwritten statement to the Navy stated he did not report the incident or seek medical attention because he felt dirty and ashamed. The Defendant confirmed this when he testified before the Court. The Court heard expert testimony from Terry Lane, a social worker and expert on victims of sexual abuse, that it is not unusual after an attack such as the one alleged that the victim would wait until he was in a place of safety to report. On July 15, 1983, after completing its review, the Navy ultimately concluded it was very unlikely the assault occurred. The Court does not know whether the attack occurred or not, but does accept that the Defendant did not create the story of the assault after the murders in an attempt to excuse his actions.

The Defendant testified that he did not believe he murdered Joan and John because of the rape, but that he thinks all events have some bearing on his behavior. He believes that no 17-year-old who suffered such an assault would be thinking rationally. The Court acknowledges that such an assault would be traumatic for anyone of any age. Although the Court does not see a strong correlation between this alleged traumatic event and the murders committed by the Defendant a few months later, the Court notes that such an event could have impacted the Defendant's mental and/or emotional state, and could have been a contributing factor in the Defendant's commission of these crimes.

E. Defendant's Criminal History

The Court was presented with no evidence the Defendant had any prior criminal history. Additionally, the Court was presented with evidence that since his incarceration, the Defendant's only discipline infraction was a minor one in 1987. The Defendant has also earned the highest level of trustee possible at Angola, which will be discussed in more detail below. These facts weigh in favor of the Defendant.

F. Incompetencies Associated with Youth Including Inability to Deal with Police and Prosecutors

The Defendant was 17 years old at the time of the murders and his subsequent arrest. Under Louisiana law, it was not necessary for a parent or guardian to be present while the police questioned the Defendant. This militates in favor of the Defendant. However, the Court notes that despite his youth, the Defendant initially claimed that Kinkade had killed Joan and John, handwriting a detailed

statement describing the events and how Kinkade had shot them. Indeed, the Defendant never admitted to law enforcement during questioning that he committed the murders.

The Court also notes that the Defendant did have the assistance of counsel beginning with his arrest in Texas. According to law enforcement reports, his rights were explained to him several times. Each time, the Defendant said he understood his rights. The Defendant was told that if he wanted to speak with the authorities from Beauregard Parish, the Defendant would have to request it. The Defendant reportedly asked to speak to authorities because he wanted to tell his side of the story. Somewhat concerning to the Court is the Defendant told law enforcement in Texas that his appointed attorney did not want to hear his side of the story and did not appear to believe anything he said. However, the attorney appointed in Texas was appointed to represent the Defendant for the limited purpose of the extradition proceedings.

The Defendant was represented by counsel in all proceedings in Beauregard Parish. He was charged with two counts of first degree murder and the State was seeking the death penalty. The Defendant originally pled not guilty and was scheduled to go to jury trial. Prior to trial, a plea agreement was reached whereby the Defendant would plead guilty to two counts of first degree murder without capital punishment and serve a sentence of life without parole. In the plea colloquy, the court took great pains to ensure the Defendant understood the process and that he was entering into the plea agreement freely and voluntarily. The court confirmed the Defendant had the opportunity to confer with his attorney, mother, and sister about the decision to enter into the plea agreement.

The Defendant's attorney expressed his personal reservation about the Defendant's ability to understand the charges against him and his rights. He stated he thought the Defendant had some problems that affected his ability to appreciate the reality of the world, and that as a young person, he might not fully appreciate what was happening or anything that had happened in his life. When questioned further by the court, the Defendant's attorney clarified that he thought that legally, to the extent the law can expect any person to understand, the Defendant understood, and the attorney believed the Defendant was tendering his guilty pleas freely and voluntarily. Again, it is noted that the defendant was an adult at the time that he entered the plea agreements in this matter.

G. Whether the Defendant Used a Dangerous Weapon, Whether the Defendant Knowingly Created a Risk of Death to More Than One Person, and Whether the Defendant Contemplated his Criminal Conduct Would Cause or Threaten Serious Harm

The evidence clearly shows the Defendant used a dangerous weapon–a .223 rifle–in committing this crime. The evidence shows the Defendant entered his father's home carrying the weapon, knowing at the very least that Joan was home. He immediately proceeded to Joan's bedroom

where he shot her twice. The Defendant then walked to John's bedroom and shot him twice. The Defendant's conduct clearly created a risk of death to more than one person.

H. Effect of the Crime on the Victims' Families and on the Community

At the time of the murders, Joan was 48. She was married to George Hauser, the Defendant's father, and was the mother of four children from her previous marriage. Her youngest son, John, who was living with her and George, was murdered by the Defendant at the same time. John was 17 years old and approximately one month younger than the Defendant.

Several family members testified before this Court including Raymond Leidig, John's father and Joan's ex-husband; George Hauser, the Defendant's father and Joan's husband; and, two of Joan's children and John's siblings, Donna Kelly and David Leidig. Another of Joan's sons, Mark Leidig, did not testify before the Court, but he did write a letter which the State offered into evidence.

Each witness spoke about the kind of people Joan and John were. They relived the painful details of how they learned of the murders. They each described the loss they suffered. They noted that Joan loved cooking and sewing, and she always made holidays special. They described John as a happy-go-lucky kid and the prankster of the family. They lamented that Joan never had the opportunity to meet her grandchildren and her grandchildren never had the opportunity to know their grandmother, and that John never had the opportunity to graduate high school, go to prom, get married, or have children of his own. Donna Kelly noted that for their family, the Fourth of July is no longer a time of celebration as it is for the rest of the country.

Although a couple of the family members testified that they believed in redemption and that people can change, none of the family members who testified supported the Defendant's request to be resentenced to life with the possibility of parole. Family members expressed their belief that Joan and John do not have an opportunity for a second chance and neither should the Defendant. The Defendant's own father, George Hauser, testified he did not believe his son should have an opportunity for parole. The State also admitted into evidence approximately twenty letters written to the Court by other members of the victims' family and members of the community, many of whom knew one or both of the victims, expressing their belief the Defendant should not be entitled to parole eligibility.

I. Defendant's Remorse, Acceptance of Responsibility, and Capacity to Appreciate the Criminality of his Actions

The Defendant testified about his life as a child. He stated that at the time of the murders, he wanted to strike back at his father as the Defendant believed that everything bad in his life was his

father's fault, including the assault he suffered in the Navy. He testified that had his father been a father to him, he would not have joined the Navy and would, therefore, not have suffered the assault.

Speaking about the assault, the Defendant stated that no 17-year-old could think rationally after such a traumatic event. He recalled that at the time of the murders, he could not really process what he had done and did not realize the consequences. He testified that he is not the same person who committed these murders. He stated he was sorry, and that he ruined the lives of the people who loved Joan and John, as well as the lives of the people who loved the Defendant. He stated he wished he could go back and do things differently.

During cross examination, the Defendant indicated that at the time, he blamed his father, but that he is no longer angry with him; he is angry with himself. He testified that he does not blame Kinkade and that he accepts full responsibility. The Defendant admitted that although his sister had told him Joan and John would be gone, once he realized they were at the house, he could have left without shooting anyone. The Defendant further acknowledged that he is seeking a second chance, something he knows Joan and John do not have.

Previously, in 2000, the Defendant wrote a letter to Ray Leidig, John's father. A copy of Mr. Leidig's reply to the Defendant's letter was admitted into the record, however, Mr. Leidig did not keep a copy of the letter the Defendant sent him. It appears that the Defendant asked for Mr, Leidig's forgiveness because Mr. Leidig wrote that he had forgiven the Defendant, but that the Defendant needed to seek forgiveness from God and not Mr. Leidig. Both the Defendant and Mr. Leidig testified that the Defendant sent another letter to Mr. Leidig and both testified that Mr. Leidig did not write back to the Defendant at that time. Mr. Leidig testified that he received a third letter from the Defendant cursing at him for not replying to Defendant's second letter. The Defendant denies that he wrote any such letter. Mr. Leidig testified that he did not keep or make copies of any of the letters, he did not show them to anyone, nor did he turn them over to the District Attorney's office. However, Mr. Leidig's testimony was credible to the court. It is also important to the court that the Defendant did not write his initial letter of remorse to Mr. Leidig until 2000, some seventeen years after he committed these murders.

The court acknowledges that the Defendant in court expressed regret for his actions and the pain he had caused but it did not appear to be a heartfelt expression of remorse. The Defendant had his father, as well as John's father and siblings, sitting in the front row of the courtroom in front of him and he made no emotional connection of remorse to them during his testimony. Words of regret were uttered but there did not appear to the court to be any true sense of remorse, particularly in regard

to his elderly father sitting in the courtroom in front of him. It appears to the court that the same desire to commit these crimes as some form of striking back at his father as admitted by the defendant was still evident all these years later. I cannot say what truly is in the Defendant's heart in this regard but his actions in the courtroom did not impress the court as a true expression of remorse.

J. Whether Grounds Exist Tending to Excuse the Defendant's Criminal Conduct

The Court finds nothing which would excuse the Defendant's criminal conduct. By all accounts, he had a relatively normal childhood. Although allegations of cruel treatment were raised by both George and Frances in their separation and divorce filings, there is no evidence before the Court that the Defendant was abused or mistreated in any way. Certainly, the evidence shows that the Defendant did not have a close, loving relationship with his father, and perhaps had little to no contact with him after his parents' divorce. This does not excuse or mitigate the Defendant's criminal conduct in murdering his stepmother and stepbrother.

That said, the Court acknowledges that the alleged assault suffered by the Defendant while in the Navy would be traumatic; but even if true, this traumatic event does not excuse the murders, but might offer some mitigation to the extent the event impacted the Defendant's ability to think rationally.

K. Likelihood of Committing Future Offenses, Whether the Defendant's Criminal Conduct was the Result of Circumstances Not Likely to Recur, and Whether the Defendant Poses a Threat to the Safety of the Public or an Individual

The Defendant admitted into evidence his risk assessment score from the Louisiana Risk Need Assessment II. The assessment was completed on July 7, 2016. A score of zero to six is considered to be a low risk. The Defendant's score was negative three. This weighs in the Defendant's favor.

The Defendant also admitted into evidence a letter dated September 9, 2016 from Johnny Dixon and Joe Norwood, Jr., Lieutenant Colonels at the K9 Unit of the Louisiana State Penitentiary at Angola. They stated that the Defendant was first assigned to the K9 Unit in October of 2001, and that during the 15 years the Defendant has been under their supervision, they have never seen him lose his temper. They have found him to be easy going and calm-natured. They stated the Defendant works long hours, takes pride in his work, and frequently volunteers for additional duties such as assisting the public in emergency situations like during floods and/or hurricanes.

The Defendant also admitted into evidence a letter dated September 9, 2016 from Jonathan London, Assistant Warden at Louisiana State Penitentiary. Mr. London wrote that the Defendant became a Class A Trustee, which is minimum custody, in September of 1998. He only had one rule infraction, in July of 1987, and London stated this is almost unheard of. London said the offenders

selected to work in the K9 Unit are carefully selected and highly trusted; they reside in the lowest security housing area on the grounds. London has observed the Defendant at the K9 Unit and notes the Defendant is devoted to the care and well-being of the animals. Mr. London stated that during the time he has known him, the Defendant has not changed and London believes that the Defendant is a decent man at his core.

This evidence weighs in favor of the Defendant. He has conducted himself admirably while incarcerated, and it seems the circumstances which led the Defendant to commit these two murders are not likely to recur.

L. Defendant's Potential for Rehabilitation

In addition to the evidence discussed above, the Defendant earned his GED in 1981, prior to the murders. Beginning in 1993, and spanning most of his incarceration, the Defendant has participated in many training programs. The Defendant initially participated in programs offered by the Jaycees earning certificates of completion in Personal Dynamics (September 26, 1993), Leadership Dynamics (October 26, 1993), Communication Dynamics and Time Dynamics (November 14, 1993), Speak-Up Jaycees (December 31, 1993), Stress Endurance (February 1, 1994), Spiritual Awareness (February 20, 1994), Personal Financial Planning (March 6, 1994), and Job Search (March 22, 1994). He participated in Prison Fellowship on June 13, 1993, May 1, 1994, and August 6, 1995. He volunteered for the Vets Walk-A-Thon for Jerry's Kids (MDA) on August 29, 1993.

On January 12, 1996, the Defendant successfully completed the course of study in Culinary Occupations through Louisiana Technical College. He has also completed courses through Louisiana State University Distance Learning Program, earning 17 credit hours with a cumulative GPA of 3.764. His courses include English Composition (1988-1989), Elementary German 1 (1995-1996), Elementary German 2 (1996-1997), Introductory Human Nutrition (1997-1998), and Occupational Safety (1999-2000). He has taken numerous courses in auto mechanics, passing the ASE tests for engine repair (February 26, 2014), electrical/electronic systems (May 18, 2014), automatic transmission/transaxle (August 22, 2014), manual drive train and axles (October 29, 2014), engine performance (March 10, 2015), and heating and air conditioning (June 30, 2015).

The Defendant has also completed courses in Jewelry Essentials (April 29, 2005), Colored Stone Essentials (June 13, 2005), Diamond Essentials (July 27, 2005). On July 27, 2005, he was awarded a diploma from the Gemological Institute of America as an Accredited Jewelry Professional.

Additionally, on August 22, 2013, the Defendant completed the 100 Hour Prerelease Re-Entry Preparation Program.

The Defendant began his incarceration in 1984. According to the discipline record admitted, he only has a single, minor discipline infraction from 1987. Beginning in 2001, the Defendant was assigned to the K9 Unit. These positions are reserved for the highest level of trustee as the inmates assigned there are not continuously guarded or watched.

The Defendant admitted a letter from Jonathan London, the Assistant Warden. Mr. London writes that the Defendant is a hard worker and is devoted to the care and well-being of the animals in the K9 Unit. Mr. London commented on the Defendant's discipline record and noted that only having one rule infraction, from July of 1987, is almost unheard of at the prison. Mr. London stated that during the years he has known the Defendant, the Defendant has never changed. Mr. London believes that the Defendant is a decent man at his core.

The Defendant also admitted a letter from Johnny Dixon and Joe Norwood, Jr., Lieutenant Colonels at the K9 Unit who have supervised the Defendant over the course of 15 years. They write that the Defendant is responsible, takes pride in his work, works long hours, volunteers for additional responsibilities, and has assisted in emergency situations, like floods and hurricanes, sandbagging houses, clearing trees to open roadways, etc. They write that the Defendant is always easy going and calm-natured.

The Defendant also presented the testimony of Thomas Roller. Mr. Roller was an inmate who lived and worked with the Defendant in the K9 Unit for eight years. In 1988, Mr. Roller pled guilty to second degree murder for the shooting deaths of his father and stepmother. In 2015, after having served 27 years, Mr. Roller filed a motion to correct illegal sentence. Thereafter, Mr. Roller was released from prison after the district court resentenced him to 21 years for manslaughter.

The facts and circumstances of Mr. Roller's crime bear mentioning. His family lived in Dubai when he was a young child. He observed his father abuse his mother and would often see her after she had been battered. He indicated he was never personally abused by his father. Later, when he was approximately 15 or 16 years old, his mother left his father. Mr. Roller testified that his father then turned on him. He forbade Mr. Roller from seeing his mother and would berate her to him. Like the Defendant, Mr. Roller was 17 when he shot and killed his father and stepmother. In Mr. Roller's case, it was a mere 6 days before his 18th birthday. He snuck into his father's home and said he just wanted to get to his room. Once in the house, he became scared and grabbed a shotgun his father had in a closet in the house. Fearing he would be seen walking to his bedroom, he hid in the bathroom. His

stepmother subsequently walked in whereupon he shot her. Mr. Roller further testified that after shooting his father and stepmother once, he shot them each again in the head. Mr. Roller indicated that he did not enter the house planning to murder his father and stepmother.

Like the Defendant in the instant case, Mr. Roller entered into a plea agreement to serve life imprisonment without the possibility of parole in exchange for the State not seeking the death penalty. Mr. Roller indicated that he did not understand the legal proceedings and thought there would be a trial. Only 53 days elapsed from the time of his arrest until he was sentenced. Unlike the Defendant in the instant case, his stepmother's family began visiting Mr. Roller in prison in 2009. Additionally, the State did not oppose Mr. Roller's motion to correct his sentence.

Mr. Roller testified concerning the Defendant's reputation at Angola. He noted the Defendant is highly regarded as someone the other inmates look up to and try to emulate in order to do the right thing. Mr. Roller stated that an inmate's character, trustworthiness, and work ethic are the considerations for placement in the K9 Unit. Of the approximately 6,300 inmates at Angola, only 15 are selected for the K9 Unit.

Additionally, Rob and Lorri Peters testified on the Defendant's behalf. They met the Defendant at the K9 Unit during a tour. At first, they did not realize the Defendant was an inmate because he was walking around the grounds without a guard. The Defendant gave them a tour of the dog pen, and the three of them began corresponding via letter. Rob testified that if the Defendant would be paroled, they had housing arranged for him and several job prospects in Texas waiting for him. They acknowledged the heinous nature of the crime the Defendant committed, but believe he is not the same person.

Similarly, Louis Lowrey, who also testified as an expert before this Court, wrote a letter after the April 26, 2018 hearing to the Defendant's attorney thanking her for her efforts on behalf of the Defendant. Like the Peters, Mr. Lowrey had been corresponding with the Defendant for the past eight years and believes he should be granted parole.

Whether the Defendant's record of good conduct and self-improvement at Angola are true signs of rehabilitation or simply his learned pattern of behavior to survive and thrive inside the prison setting, the Court cannot determine. However, the Defendant's conduct at Angola over the last thirty-five years or so is commendable and is certainly mitigating evidence in favor of parole eligibility.

Conclusion

Many questions remain concerning the events of that day. Considering the length of time that has passed, the fact that there was no trial to preserve evidence and testimony (and most of the

investigating officers are now deceased), and the unreliable nature of the various statements made to law enforcement officers, the Court does not believe it will ever definitively know exactly what occurred. The only absolute truth is that two people were murdered that day and it was the Defendant who murdered them. It is also true that there is nothing that this Court, or the Defendant, can do to restore the lives that were taken more than 30 years ago.

This Court, however, is bound to apply the law. The United States Supreme Court has found that juveniles are different from adults, "have diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at 471. Additionally, the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 472. The Supreme Court requires that a sentencer consider the "mitigating qualities of youth" before a sentence of life without the possibility of parole may be imposed on a juvenile. *Id.* at 476. It noted that mandatory sentencing schemes

> preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other–the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And worse still, each juvenile . . . will receive the same sentence as the vast majority of adults committing similar homicide offenses–but really, as *Graham* notes, a *greater* sentence than those adults will serve.

Id. at 476–77. However, the Court clarified that

> [e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth amendment for a child whose crime reflects "unfortunate yet transient immaturity." Because *Miller* determined that sentencing a child to a life without parole is excessive for all by "the rare juvenile offender whose crime reflects irreparable corruption," it rendered life without parole an unconstitutional penalty for . . . juvenile offenders whose crimes reflect the transient immaturity of youth.

Montgomery I, 136 S. Ct. at 734 (internal citations and quotations omitted). Indeed, Justice Sotomayor has stated that "the gruesomeness of a crime is not sufficient to demonstrate that a juvenile offender is beyond redemption." *Adams*, 136 S. Ct. at 1800 (Sotomayor, J., concurring). In keeping with the sentiments expressed by the United States Supreme Court, the Louisiana Legislature has stated that a determination that a defendant "is not entitled to parole eligibility should normally be reserved for the worst offenders and the worst cases." La. C.Cr.P. art. 878.1(D).

The Court heard two days of testimony and has considered voluminous documentary evidence. As might be expected in a case such as this, some factors weigh in favor of the State and some factors weigh in favor of the Defendant. The Court finds itself having to weigh the nature and circumstances of the crime, the extent of the Defendant's planning and participation, and the impact on the victims' family with the Defendant's low risk assessment, lack of prior criminal history, and his exemplary record while incarcerated.

The Court notes that the Defendant has had an exemplary prison record. Even before the United States Supreme Court's rulings in *Miller* and *Montgomery*, the Defendant earned the highest level of trust at Angola. Indeed, the premise behind the Supreme Court's earlier rulings in *Roper* and *Graham* was the undeveloped nature of a juvenile's brain and the capacity for a juvenile to change as he or she ages. The Court notes the opinions of people who have more recently met the Defendant who believe he has changed. The Court also notes the positive assessment of the Defendant by the prison guards and assistant warden.

However, the Court does not find these murders to have been the result of youthful impulsivity. The Defendant armed himself in advance, purchased rubber gloves, drove approximately seven hours through the night from Texas to DeRidder, parked over one mile away from the house, and hid behind outbuildings until he saw his father leave. Although this behavior could be consistent with an intent to enter the house to either steal things from his father or collect his own belongings, the Defendant himself testified that he saw Joan before he entered the home. Neither Joan nor John took the Defendant by surprise, and the Defendant admitted he could have simply left without shooting anyone.

Further, the Court notes that although the Defendant employed the assistance of Kinkade, the Defendant was the primary planner of the events which led to these two murders. Even though the Defendant was approximately nine years younger than Kinkade, this crime was not the result of peer pressure. The Court also finds that although the Defendant may not have had a perfect family life or good relationship with his father, there was no evidence of any abuse by his father which would tend to explain the Defendant's course of action. The Court would further note that even if the Defendant did suffer a traumatic assault while in the Navy it is not an excuse to commit these murders. The fact that the Defendant has been a model prisoner is certainly commendable; however, as Mr. Lowrey testified, prison is a highly-structured environment wherein it behooves one to comply with the rules.

That said, the Court is of the opinion that the murders of Joan Hauser and John Leidig were not the result of impulsiveness or transient immaturity, but were calculated acts of cold-blooded murder. The Court further finds that any purported regret now expressed by the Defendant is for the primary purpose of his request to be granted parole eligibility.

Considering all aggravating and mitigating evidence in this matter and all of the factors expressed herein pursuant to La. C.Cr.P. art. 878.1, this matter is found to be one fo the worst offenders and the worst cases. Therefore,

IT IS ORDERED, ADJUDGED, AND DECREED that the Defendant shall continue to serve his existing sentences of life imprisonment without parole eligibility on each of the two counts of First Degree Murder.

THUS DONE AND SIGNED on this 20th day of December, 2018, at DeRidder, Louisiana.

C. KERRY ANDERSON
DISTRICT JUDGE
DIVISION B

A TRUE AND CORRECT COPY
OF THE ORIGINAL
Deputy
Clerk of Court
Beauregard Parish, LA