

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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CHARLES KUNTA LEWIS, JR. – PETITIONER

v.

STATE OF MICHIGAN – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTION PRESENTED**

- I. The Constitution prohibits punishments that are cruel and unusual. In addition to the crime committed, the juvenile offender's age must also be taken into account when crafting a sentence. This Court has found that laws that fail to take a defendant's youthfulness into account are flawed. Was the sentence given to Mr. Lewis unconstitutional because it violated the prohibition against cruel and unusual punishment when his youthful attributes were not taken into consideration at sentencing due to the mandatory minimum sentence of 25 years that had to be imposed?

### **List of Parties**

All parties appear in the caption of the case on the cover page.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

The order of the Michigan Supreme Court is unpublished. It is attached as Appendix D.

### **Jurisdiction**

The date on which the Michigan Supreme Court decided Mr. Lewis' case was April 29, 2020. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## Constitutional and Statutory Provisions Involved

### Eighth Amendment

## STATEMENT OF THE CASE<sup>1</sup>

This case involves the tragic death of Shayla Johnson and the subsequent conviction and sentencing of Charles Lewis, who was a juvenile at the time of Ms. Johnson's death. (Tr. I, 3-4; Tr. VIII, 10.) Mr. Lewis was found guilty of participating in the unfortunate series of events that led to Ms. Johnson's death and, at the conclusion of his trial, Mr. Lewis received a delayed sentence from the trial court. (S. I, 6.) He was placed at a boys' training school. (S. I, 6.) In explaining to Mr. Lewis what would occur if he did not successfully comply with the rules of his supervision, the trial court told Mr. Lewis that there was a difference between a bump while being supervised and a pothole. (S. I, 7.) On February 15, 2017, the trial court ultimately found that Mr. Lewis' alleged violations were more akin to "potholes" and sentenced Mr. Lewis to 2 years in prison for possession of a firearm during a felony with zero days of credit. (S. II, 107.) For the two counts of home invasion, Mr. Lewis received a sentence of 10 to 20 years. (S. II, 107.) For both counts of assault with intent to rob while armed, Mr. Lewis received a sentence of 10 to 20 years. (S. II, 107-108.) For first-degree murder, Mr. Lewis received a sentence of 25 to 60 years. (S. II, 108.) He received credit for 2,399 days. (S. II, 108.) All sentences, other than the felony firearm charge, were to run concurrently. (S. II, 208.)

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<sup>1</sup> For ease of reference, transcripts will be delineated as follows:

Tr. I – Trial, day one, 01/23/2012  
Tr. VIII – Trial, day eight, 02/01/2012  
S. I – Sentencing, 04/13/2012  
S. II – Sentencing, 02/15/2017  
R.H. – Review hearing, 08/09/2016

Mr. Lewis then filed a claim of appeal on March 27, 2017, from the final judgment that entered on February 15, 2017. (Claim of Appeal, 3/27/17.) After the claim of appeal was filed with the Court of Appeals, Mr. Lewis filed a motion for resentencing with the Ingham County Circuit Court. (Motion for Resentencing, 2/6/18.) A motion hearing was held on April 3, 2018, and an order denying that motion was signed on April 6, 2018. (Exh. A.) The Court of Appeals issued an unpublished opinion affirming Mr. Lewis' sentence on July 9, 2019. (Exh. C.) Mr. Lewis filed an application with the Michigan Supreme Court that was denied. (Exh. D.)

### **REASONS FOR GRANTING THE PETITION**

#### **I. Mr. Lewis was unconstitutionally sentenced because his juvenile status was not properly taken into account.**

Children are constitutionally and developmentally different than adults. This Court has now recognized and established that "children [under 18] are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471; 132 S. Ct. 2455; 183 L. Ed. 2d 407 (2012). Developments in science show considerable differences between the brains of children and adults. "[T]he 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.

Under this Court's precedent, a court must have the opportunity to consider mitigating circumstances before imposing a penalty on juveniles. Mitigating circumstances for youth include a lack of maturity, an underdeveloped sense of responsibility, limited control over their environment, and the capacity for change.

*Id.* This Court has mandated that juveniles be provided “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* at 479, quoting *Graham v. Florida*, 560 U.S. 48, 75; 130 S. Ct. 2011; 176 L. Ed. 2d 825 (2010). The trial court erred in sentencing Mr. Lewis as an adult, and the state appellate courts erred in affirming this sentence. Mr. Lewis’ sentence does not provide a meaningful opportunity for release, which violates the Eighth Amendment against cruel or unusual punishment, and his prior counsel provided ineffective assistance of counsel in not challenging the constitutionality of this sentence.

Mr. Lewis’ status as a juvenile at the time of the crime was not taken into account, as well as his exceptional performance at the juvenile-justice facility during his delayed sentence and probation, and the mitigating factors surrounding his alleged probation violations. Further, Mr. Lewis’ sentence does not accurately reflect his personal involvement in and the mitigating circumstances surrounding the original offense because of the mandatory minimum sentence that the trial court was required to give. This mandatory minimum sentence is unconstitutional.

**A. The trial court improperly revoked Mr. Lewis’ probation and sentenced him as an adult.**

The mandate of individualized sentencing for juveniles facing the most serious penalties requires courts to consider a juvenile’s lessened culpability and greater capacity for change. *Miller*, 567 U.S. at 465. To ignore this is to deny due process to juveniles convicted of crimes. In *Miller*, this Court recognized the lack of maturity and underdeveloped sense of responsibility underlying the recklessness and impulsivity typified by juveniles. *Id.* Further, their lack of well-formed characters was

pivotal. *Id.* This Court explained that common sense, science, and social science buttress its decision. *Id.* Juveniles are different from adults because of their capacity for change and because of their decreased level of culpability.

In Michigan, under M.C.L. 771.7, a trial court has the option of sentencing a juvenile who violates probation to a range of punishments, from counseling to thirty days in jail to a prison sentence under the Michigan Department of Corrections. But, as further analyzed in Section D., M.C.L. 769.25(9) strips the court of discretion when sentencing a juvenile who has been convicted of first-degree murder and who has violated probation. Further, regardless of the unconstitutional nature of M.C.L. 769.25(9), the trial court improperly revoked Mr. Lewis' probation and sentenced him as an adult. The trial court ignored the nature of the alleged violations and took a sweeping approach to, at most, minor violations.

Juvenile Disposition Specialist Angelo Flowers testified Mr. Lewis was involved in individual and group therapy. (R.H., 5.) Mr. Lewis was working with him to continue his education and find employment. (R.H., 5.) Critically, the services that Mr. Lewis engaged in were *ongoing* services. (R.H., 5.) Mr. Flowers believed that Mr. Lewis had adjusted "well overall" to his new group home placement. (R.H., 6.) He indicated that he believed he needed more structure, such as with employment and education. (R.H., 7.) In the last reporting period, Mr. Lewis had only one issue where he had a bottle of urine on his person, presumably to test clean on a substance use screen. (R.H., 7.) The incident with the urine was Mr. Lewis' *only* positive screen.

(R.H., 9.) Every other actual urine screen before and after the “positive” test was negative. (R.H., 9.)

Mr. Lewis had explained to Mr. Flowers that his mother’s health was failing, and he had a drink to try and deal with his grief and pain. (R.H., 9-10.) Mr. Lewis was not attending college classes because there was an issue with financial aid, but this was beyond his control. (R.H., 10-11.) He had taken his placement tests on time, even though there was an initial issue with the tests. (R.H., 10.) Mr. Lewis did everything he possibly could to take classes at Macomb Community College, and he was already enrolled for classes and ready for the new term to begin when the court sentenced him to prison. (R.H., 12-13.) Mr. Flowers said that Mr. Lewis was “absolutely” eager to go to college. (R.H., 13.) He had also needed help looking for work, but he had received an employment offer by the time of the hearing. (R.H., 13-14.)

Alexis Terry was Mr. Lewis’ therapist. (R.H., 15.) She stated that Mr. Lewis was on track after the mistake that he made. (R.H., 15.) Mr. Lewis was initially resistant to taking advice related to his job search, but this changed and he was no longer resistant. (R.H., 17.) This was evidence of his ability to grow and change. Mr. Lewis struggled to talk about his feelings surrounding his mother’s cancer at first. (R.H., 18.) But this was changing, as Mr. Lewis matured, and the struggle to talk about sadness and loss is common to many juveniles and adults alike.

Ms. Terry stated that she did not believe that Mr. Lewis had the potential for violent conduct. (R.H., 21.) Mr. Lewis had no physical altercations with anyone, he

was not verbally aggressive, and he got along well with his peers and staff. (R.H., 21.) Ms. Terry stated that Mr. Lewis had a low risk of re-offending. (R.H., 21.) Under the assessment tools used, there is only a possibility of low, medium, and high risks, and Mr. Lewis was in the lowest category. (R.H., 24.) He had a lapse in judgment, but he was not at risk of committing another crime. (R.H., 21.)

Notably, it was reiterated that Mr. Lewis was excited about attending college. (R.H., 27.) His counselor at the group home described him as very resilient, accepting, and positive when things do not go his way. (R.H., 28.) He was also respectful to his peers and to the staff at the group home. (R.H., 28.) He is a leader. (R.H., 28.) In August 2016, Mr. Lewis had been having positive reports every quarter with the exception of the August 2016 report, which had to do with the presumptive positive urine screen for alcohol and his initial resistance to taking advice on the best way to pursue employment. (R.H., 30.) However, Mr. Lewis was on the right path, and his purported violations were not the sort that warranted a lengthy prison sentence. Trial counsel argued vigorously for the trial court to take into account Mr. Lewis' history and to sentence him proportionately and as a juvenile, but the trial court ignored Mr. Lewis' progress and sentenced him as an adult to prison.

Mr. Lewis' psychiatric evaluation provides further proof that the trial court improperly sentenced Mr. Lewis. The trial court ignored the studied and reasoned opinions of professionals. In October 2016, Mr. Lewis was evaluated by Thomas L. Atkins, M.D., Board Certified Child and Adolescent Psychiatrist from the University of Michigan Department of Psychiatry and Nakita Natala, M.D., also from the

University of Michigan Department of Psychiatry and a Child and Adolescent Psychiatry Fellow. (Exh. B, 11.) Their recommendation after evaluating Mr. Lewis was clear and is as follows:

Based on the above formulation and mitigating factors, we believe Charles Lewis Jr. is capable of successful rehabilitation. It is our professional opinion that he should continue to receive support to help him reintegrate into society. The mitigating factors outlined by the supreme court have strong implications in the case of Charles Lewis Jr. Our analysis of these mitigating factors clearly demonstrate that sentencing him as an adult would go against the principle of graduated and proportioned justice. [Exh. B, 11.]

Their evaluation was thorough and detailed as follows:

Charles has demonstrated a strong ability to use healthy coping skills to deal with adverse situations and an exceptional ability to grow through the rehabilitation programs offered to him. He has remained hopeful and resilient through the use of religion, writing poetry and contact with family. Charles now has the ability to critically reflect on the antecedents and consequences of the crime including his feelings of remorse and the emotional impact the murder had on the victim's mother. He also described how his environment and newly formed relationship with his father influenced his decisions. During the past assessment, Charles seemed to idealize his father as a "good guy" despite much evidence to the contrary. With rehabilitation and a more mature brain, he now understands the consequences associated with being around his dad and assesses his relationship with his dad more realistically than he did when he was 13. He is now angry, sad, and resentful for what his father has done to Shayla Johnson, her family, and himself.

Charles was sincere in his recount of his impulsive decision to leave his job after receiving a call that his mother was dying. Charles is able to describe, with regret, that he acted impulsively and desperately when faced with the likelihood of his mom's imminent death. Given that his mom provided essential support throughout his life, we assert that the fear of losing her temporarily impacted his judgement. With time to reflect, he now easily acknowledges his mistake and is angry with himself for compromising the progress he has made.

Charles was far more engaged and analytical today than he was when interviewed four and half years ago. Judge Economy gave him the opportunity to benefit from a robust rehabilitation program. Charles

gratefully and enthusiastically participated in this opportunity. Even several years later, he can recall and use the lessons taught to him in rehabilitation programs and his insight and judgment have progressed substantially. Charles is also altruistic and wants young people to learn from his story. He has solidified his love of learning; testimony from his teacher, his graduation as valedictorian, his cosmetology certificate, and his continued college education all attest to that. Charles has realistic goals and believes that if given the chance, education and skill will allow him to live a productive and peaceful life in society. [Exh. B, 10.]

Mr. Lewis' psychological evaluation further highlights what this Court was concerned about when sentencing a juvenile offender and what the trial court ignored.

The evaluation states the following:

The development and functioning of the adolescent brain has major impacts on behavior. The changes that occur in the brain in adolescence result in the emotional areas of the brain being more developed than the regulating parts of the brain when compared to adult brains. Prior to puberty, there is a surge in nerve cell growth and connections within the brain. This surge results in an increase in gray matter and "potential thinking power;" however, the new gray matter is poorly organized. From the onset of puberty until the early 20s, the brain "rewires" or reorganizes itself using two mechanisms. Connections in nerve cells that are not often used are "pruned" or die off in a process called neural pruning. In a second process called myelination, nerves and nerve connections that fire together are selectively covered in a fatty material called Myelin. Myelin strengthens the connection between nerves and strengthens the transmission of information. This process occurs at a slow and steady rate, starting at the back of the brain and working towards the prefrontal cortex (part of the brain located behind the forehead). There are consequences to having the prefrontal cortex be the last region of the brain to fully mature. The prefrontal cortex allows the brain to process more complex information, exercise better judgment, problem solve, and regulate behavior. These processes collectively are called executive functions.

This normal but uneven maturation process leaves young people (approximately ages 12-22) vulnerable to being overly influenced by other parts of the brain. For example, the reward seeking circuitry of the brain, influenced by increasing dopamine receptors and hormones, is very active and results in riskier and more "thrill seeking" behavior. Young people are still capable of sound decision making but it takes more concentration and energy. Environmental distraction, such as the

presence of peers, can often make the required level of concentration for proper executive functioning unobtainable. [Exh. B, 8-9.]

As it specifically relates to Mr. Lewis, the evaluator stated the following:

Charles' prefrontal cortex was developing through this uneven maturation process at the time of Shayla's murder and undoubtedly played a role in his behavior that night. When he was 13, he was infatuated with his father, excited that he was finally a part of his life and fixated on forming a relationship with him. Spending all his time with his dad was novel and emotionally satisfying. His more emotional brain was not well regulated by his underdeveloped prefrontal cortex which would have helped him better assess the risks and identify his dad's behavior patterns as dangerous.

Charles describes only one positive male role model in his life (maternal uncle) prior to his incarceration. He grew up knowing his father was in prison and in an environment surrounded by peers, adults, siblings and caretakers who engaged in criminal behavior. We strongly believe that these childhood experiences impacted his social development and normalized criminal behavior for him. These circumstances conditioned Charles to be more tolerant of criminal behavior and placed him in a position of little power or influence on the night of the crime. That night, Charles was the only child present among 7 men including his father. Charles was being told to go somewhere by his long absent father; a man with whom Charles was desperate to please and establish a relationship with. Charles was too young and immature to extricate himself from the situation. He could not speak against what little he knew about his father's plan, he could not get himself safely back to his mother's house, nor could he stay behind at a stranger's house alone. Charles indicated that he was repulsed and frightened by the way Shayla was treated and, despite his powerless situation and young age, chose to leave the house alone. Charles reports having had no knowledge of a kidnapping plan or the atrocity that was about to occur and yet he had already decided to separate himself from the group. At the time of Shayla's death Charles states he was panicked and running away.

At the time of the murder and initial sentencing, Charles was not old enough to be a reliable witness and was less likely to be offered an acceptable plea agreement. Additionally, his age was largely responsible for his distorted and idealized view of his father. This distortion and his immaturity caused him to focus primarily on protecting his father rather than thinking about the consequences the murder would have on his own future. [Exh. B, 9-10.]

When sentenced to prison, Mr. Lewis did not just exhibit the potential for change—he clearly exhibited that he had already changed and would continue to do so. He had graduated with his high school diploma, and he was valedictorian of his class. (Exh. B, 2.) He had realistic plans to graduate from college. (Exh. B, 2.) He had completed numerous programs that help him with decision-making and the difficult issues that he has had to deal with because of his life circumstances. (Exh. B, 2.)

Mr. Lewis described his decision-making when leaving the group home without permission to see his dying mother. (Exh. B, 3.) His mother was his greatest support, and he received a call that she was on life support and would pass away soon. (Exh. B, 3.) He received the call on a Sunday and the next day was Labor Day. (Exh. B, 3.) He was concerned that waiting and following the rules would cause him to miss his last chance to say good-bye to his mother and be with her when she died. (Exh. B, 3.) So he left the group home without permission, so that he could be present when his mother passed away on September 11. (Exh. B, 3.) Before his mother's funeral, he was arrested while he was staying at his cousin's home. (Exh. B, 3.) While Mr. Lewis' choice was an impulsive one, it is certainly an understandable one. He wanted to see his mother one last time before she passed away and for her to hear from him that he loved her and that he was grateful that he was her son. Mr. Lewis' decision arose from compassion and love, and now he is being punished by a lengthy prison sentence because of it.

The evaluators stated that Mr. Lewis' reaction to his mother's death was appropriate. (Exh. B, 7.) His prognosis was good because he has demonstrated

positive coping strategies. (Exh. B, 7.) Notably, Mr. Lewis has the capacity to feel connected to and care for others. (Exh. B, 7.) The October 2016 evaluation highlighted an important characteristic about Mr. Lewis—his resilience. (Exh. B, 7-8.) His ability to navigate through his childhood and all the other stressors in his life show this important quality. (Exh. B, 7-8.) Yet the trial court considered none of this when sentencing Mr. Lewis as an adult. Mr. Lewis' actions were not the “potholes” that the court referenced, and the court improperly revoked Mr. Lewis' juvenile probation and sentenced him as an adult to spend decades in prison. This sentence violates the fundamental due process principles from the United States and Michigan Constitutions that a sentence must be individualized and proportionate to the offense and the offender.

**B. M.C.L. 769.25(9) does not comply with the constitutional mandates articulated by this Court because it does not provide Mr. Lewis with a meaningful opportunity for release.**

This Court has unequivocally stated that whatever sentence is imposed on a juvenile offender, the juvenile must be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Miller*, 567 U.S. at 479, quoting *Graham*, 560 U.S. at 75. This Court has stated what science now knows—immaturity, irresponsibility, impulsivity, and recklessness are signature qualities of youth, and they are transient in nature. *Johnson v. Texas*, 509 U.S. 350, 368; 113 S. Ct. 2658; 125 L. Ed. 2d 290 (1993). A minor’s background as well as his mental and emotional development must be duly considered in assessing his culpability. *Eddings v. Oklahoma*, 455 U.S. 104, 116; 102 S. Ct. 869; 71 L. Ed. 2d 1 (1982); *Miller*, 567 U.S.

at 477. Children are not just miniature adults. *JDB v. North Carolina*, 564 U.S. 261, 274; 131 S. Ct. 2394; 180 L. Ed. 2d 310 (2011). And a sentencing court must take into account how children are different when sentencing a juvenile. *Miller*, 567 U.S. at 480. A sentencing court must “follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Id.* at 483. “[Y]outh matters for purposes of meting out the law’s most serious punishments.” *Id.*

**C. Recent research involving human brain development, specifically the juvenile brain, provided the foundation that this Court used to guide its holdings on juvenile sentencing.**

This Court’s decisions related to juvenile offenders are based on “common sense—on what ‘any parent knows’—[and] on science and social science.” *Miller*, 567 U.S. at 471; see also *Roper v. Simmons*, 543 U.S. 551, 569; 125 S. Ct. 1183; 161 L. Ed. 2d 1 (2005). According to this Court, “those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Miller*, 567 U.S. at 472, citing *Graham*, 560 U.S. at 68, quoting *Roper*, 543 U.S. at 570.

In accord with this Court’s precedent, recent developments in technology have enabled scientists to make major advances in researching human brain development, especially juvenile brain development. The bulk of the advances in human brain development research have been made in the past 16 years. Science has now shown that the prefrontal cortex is the last part of the brain to mature, continuing

development throughout adolescence and into early adulthood. B.J. Casey, et al., *Imaging the developing brain: what have we learned about cognitive development?*, Trends Cog. Sci., March 2005, at 104. The growth and development of the prefrontal cortex has been found to directly correlate with behavioral performance. *Id.* at 106. The prefrontal cortex controls processes such as working memory, response inhibition, and attention allocation. B.J. Casey, et al., *Structural and functional brain development and its relation to cognitive development*, Bio. Psych., 2000, at 244. As the prefrontal cortex matures, so do higher cognitive abilities. B.J. Casey, et al., *Imaging the developing brain: what have we learned about cognitive development?*, Trends Cog. Sci., March 2005, at 106.

Matured cognition allows a person to filter through irrelevant information, apply accurate information to the situation, and react appropriately. *Id.* Since the prefrontal cortex continues to develop for decades, a juvenile brain may not be able to fully comprehend and control inappropriate actions. *Id.* An underdeveloped prefrontal cortex is more sensitive to multiple responses to one stimulus and has more difficulty choosing from the competing sources. *Id.* at 107. The prefrontal cortex also plays a part in long-term planning while making judgment calls. Laurence Steinburg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence*, Am. Psychol., December 2003, at 1013.

Development patterns within the prefrontal cortex indicate that these cognitive processes are still not fully developed well into late adolescence, which signifies that juveniles cannot fully understand the long-term consequences of their

decisions. *Id.* White matter, which affects how the brain functions and learns by relaying communication across the brain, steadily increases within the brain throughout adolescence and into adulthood. Sarah-Jayne Blakemore, *Imaging brain development: The adolescent brain*, NeuroImage, 2012, at 399. However, grey matter, which is associated with processing and cognition, decreases gradually throughout adolescence and early adulthood. *Id.* at 400. This is believed to coincide with a decrease in synapses, which transmit information between neurons. *Id.* As a person ages and is exposed to his environment for longer, synapses are pruned away and remaining synapse connections are strengthened. B.J. Casey, et al., *Structural and functional brain development and its relation to cognitive development*, Bio. Psych., 2000, at 246. The remaining synapses are strengthened due to repeatedly being exposed to situations and learning the appropriate response. *Id.* The pruning of synapses not relevant to situations a person is exposed to creates a faster and more appropriate response because competing and inappropriate reactions are now weakened and suppressed. *Id.*

It is well-known that adolescence is a period of life that involves risk-tasking and inappropriate behavior, which can contribute to criminal activity. *Id.* Because the brain is still developing during this period of life, juveniles who commit offenses are certainly capable of rehabilitation. Sarah-Jayne Blakemore, *Imaging brain development: The adolescent brain*, NeuroImage, 2012, at 404. Unlike adults, juveniles involved in criminal acts are still developing their own personal identity, rather than displaying actual bad character. Laurence Steinburg & Elizabeth S.

Scott, *Less Guilty by Reason of Adolescence*, Am. Psychol., December 2003, at 1009.

Even if a juvenile's cognitive processes have matured close to an adult's, the juvenile still has not likely had enough experience within his environment to make appropriate decisions the way an adult would. *Id.* at 1012.

Advances in neuroimaging methods, such as magnetic resonance imaging (MRI), have rapidly revealed new scientific discoveries. Laurence Steinburg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence*, Am. Psychol., December 2003, at 1012. Scientists have since conducted solid studies on the juvenile brain and its continued development. *Id.* These studies challenged the assumption that most of the brain's development concluded in early childhood. In one study, researchers used MRI to obtain images during participants' lifespans to monitor brain development and growth. Sarah-Jayne Blakemore, *Imaging brain development: The adolescent brain*, NeuroImage, 2012, at 399. These images revealed that the brain continues to develop for multiple decades. *Id.*

Studies now show that bad decisions on a juvenile's part are not indicative of a "bad person," but instead of an underdeveloped brain that has the ability to mature and learn from wrongdoing. Laurence Steinburg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence*, Am. Psychol., December 2003, at 1013. This evidence is critical for courts to consider when sentencing a juvenile and when laws are being written about mandatory minimum sentences for juveniles. This science has been ignored in Michigan.

**D. The recent developments in brain science are influencing this Court's opinions by proving the differences between adult and juvenile minds and their decision-making processes.**

Multiple opinions from this Court have been influenced by developments in juvenile brain science. In *Roper*, 543 U.S. at 556, the defendant committed first-degree murder at the age of 17. He was convicted and sentenced to death after he had turned 18. *Id.* This Court held that the Eighth and Fourteenth Amendments prohibit executing an offender who was under the age of 18 at the time of the crime. *Id.* at 568, 578. This Court cited numerous studies concluding that as an individual matures, risky behavior or illegal activities tend to cease. *Id.* at 570. Studies confirm that juveniles have a “lack of maturity and an underdeveloped sense of responsibility[,]” which often leads to impulsive decisions. *Id.* at 569, quoting *Johnson*, 509 U.S. at 367.

This Court again looked at the difference between juveniles and adults in *Graham*, where the defendant was sentenced to probation for crimes committed when he was 16 years old, one being armed burglary. *Graham*, 560 U.S. at 53. It was found that he committed additional crimes while on probation, thus violating his probation. *Id.* at 54-55. The trial court revoked his probation and sentenced him to life in prison for the armed burglary. *Id.* at 57. This was a life with the possibility of parole sentence, but there was no practical possibility of release due to Florida abolishing its parole system. *Id.* This Court held that the Eighth Amendment prohibits sentencing a juvenile offender who did not commit homicide to life without parole and an offender who demonstrates growth, maturity, and rehabilitation must be provided a meaningful opportunity to obtain release. *Id.* at 74-75. “[D]evelopments in

psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. . . . Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.” *Id.* at 68.

This Court noted in *Miller*, 567 U.S. at 471-472, that its decision was supported by the scientific studies regarding juvenile brain development that it previously cited in *Roper* and *Graham*. Courts from around the country, including this Court, have all recognized that a juvenile’s brain requires courts to provide for a meaningful opportunity for release based on the juvenile’s growth, maturity, and rehabilitation as he ages. This cannot occur in Michigan because of the mandatory minimum sentence that must be imposed.

**E. The Constitution requires that courts consider the attendant characteristics of youth when sentencing a juvenile.**

Due process is a constitutional guarantee for all people. U.S. Const., amend. V; U.S. Const., amend. XIV. The mandate of individualized sentencing for juveniles facing the most serious penalties requires courts to consider a juvenile’s lessened culpability and greater capacity for change. *Miller*, 567 U.S. at 465. To ignore this is to deny due process to juveniles convicted of crimes. In *Miller*, this Court recognized the lack of maturity and underdeveloped sense of responsibility underlying the recklessness and impulsivity typified by juveniles. *Id.* Further, their lack of well-formed characters was pivotal. *Id.* This Court explained that common sense, science,

and social science buttress its decision. *Id.* Juveniles are different from adults because of their capacity for change and because of their decreased level of culpability.

Studies have shown that juveniles are not fully mature and should not be held to the same standards as adults who have reached full maturation. The brain continues to evolve and mature until the person reaches their mid-twenties. This Court in *Roper* stated that a lack of maturity and underdeveloped sense of responsibility in juveniles results in impetuous decisions and rash actions where ramifications are not considered. *Roper*, 543 U.S. at 569. Michigan's mandatory sentencing law ignores this science and violates the law.

**F. Michigan's statute precludes courts from considering the attendant characteristics of youth and engaging in individualized sentencing.**

The Michigan Legislature has mandated that a sentence of 25 to 40 years with a maximum of 60 years is required for a juvenile convicted of first-degree murder who is not sentenced to life without the possibility of parole. M.C.L. 769.25(9). This sentence—that requires a minimum of 25 years in prison for Mr. Lewis—ignores this Court's mandate that juveniles are different from adults, and it does not provide Mr. Lewis with a meaningful opportunity for release based on demonstrated rehabilitation.

In Mr. Lewis' case, the statute precluded the trial court from individualizing his sentence and considering his youth and its attendant characteristics once it decided to sentence him as an adult to prison. This Court's decisions are based on “common sense—on what ‘any parent knows’—[and] on science and social science.”

*Miller*, 567 U.S. at 471; see *Roper*, 543 U.S. at 569. According to this Court, “those

findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Miller*, 567 U.S. at 472, citing *Graham*, 560 U.S. at 68, quoting *Roper*, 543 U.S. at 570.

The extent to which his offense was the product of juvenile characteristics, such as impulsiveness, recklessness, and an underdeveloped sense of responsibility, was not properly factored in when the sentence was chosen because the trial court could not do so once it chose to sentence Mr. Lewis as an adult to prison. Mr. Lewis’ purported missteps were in stark contrast to the overall progress that he was making, but the trial court was required to sentence Mr. Lewis as an adult to a minimum of 25 years for his transgressions.

The facts showing the travesty of sentencing Mr. Lewis to prison for decades were earlier outlined. Noteworthy facts are that Mr. Lewis was successfully involved in ongoing individual and group therapy. (R.H., 5.) Mr. Lewis did everything he possibly could to take classes at Macomb Community College, and he was already enrolled for classes and ready for the new term to begin. (R.H., 12-13.) He also had an employment offer at the time he was sentenced to prison. (R.H., 13-14.)

Mr. Lewis’ therapist stated that she did not believe that Mr. Lewis had the potential for violent conduct. (R.H., 21.) Mr. Lewis had no physical altercations with anyone, he was not verbally aggressive, and he got along well with his peers and staff.

(R.H., 21.) Ms. Terry stated that Mr. Lewis had a low risk of re-offending, which is the lowest possible category. (R.H., 21.)

Doctors from the University of Michigan stated that Mr. Lewis should *not* be sentenced as an adult. (Exh. B, 11.) Sentencing Mr. Lewis as an adult would go against the principle of graduated and proportioned justice. (Exh. B, 11.) When sentenced by the trial court to prison, Mr. Lewis did not just exhibit the potential for change—he clearly exhibited that he had already changed and would continue to do so. He had graduated with his high school diploma, and he was valedictorian of his class. (Exh. B, 2.) He also had realistic plans to graduate from college. (Exh. B, 2.)

Notably, Mr. Lewis has the capacity to feel connected to and care for others, and he showed genuine remorse for his actions. (Exh. B, 7.) The October 2016 evaluation highlighted an important characteristic about Mr. Lewis—his resilience. (Exh. B, 7-8.) His ability to navigate through his childhood and all the other stressors in his life show this important quality. (Exh. B, 7-8.) Yet the trial court could consider none of this when sentencing Mr. Lewis as an adult to prison. While it was error for the trial court to sentence Mr. Lewis as an adult because his purported probation violations did not rise to the level to warrant that sentence, even if the trial court did not err in imposing an adult sentence, the requirement of a 25-year sentence is unconstitutional. The trial court was required to impose a sentence of at least 25 years despite the tremendous demonstrated maturity and rehabilitation that Mr. Lewis had already exhibited. This violates this Court's mandates. The statute strips the trial court of its rightful and constitutional authority, and trial counsel was

ineffective in not challenging the constitutionality of the statute. There was no strategic reason to allow Mr. Lewis to be sentenced to decades in prison, and Mr. Lewis is indeed prejudiced as he serves this onerous sentence. See *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

**G. The sentence given to Mr. Lewis is unconstitutional because it violates the prohibition against cruel and unusual punishment.**

The Eighth Amendment of the United States Constitution prohibits the infliction of cruel and unusual punishment. The proportionality of the punishment to the offense and the offender is the test. *Graham*, 560 U.S. at 59. The test is whether the punishment exceeds that which is suitable to the crime. *Id.* “An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.* at 76.

This Court’s rulings regarding sentencing practices for juvenile offenders rest squarely on this Court’s acknowledgment and acceptance of new science. In light of this new science, the distinctive and transitory mental traits of juvenile offenders, when analyzed under the parameters of the Eighth Amendment’s ban on cruel and unusual punishment, has led this Court to create the guiding principle that juvenile offenders are “constitutionally different from adults for sentencing purposes.” *Miller*, 567 U.S. at 471.

“Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievable depraved character’ than are the actions of adults.” *Graham*, 560 U.S. at 68; see also *Roper*, 543 U.S. at 570. This Court went on to say that “[f]rom a moral standpoint it would be misguided to equate the failings of

a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Roper*, U.S. 551 at 570. In *Graham*, 560 U.S. at 68, it was recognized that juveniles have lessened culpability and are less deserving of the most severe punishments because they lack the maturity and responsibility that adults have. They are more susceptible to negative influences and outside pressures, and their characters are not well-formed. *Id.* Mr. Lewis' sentence is unconstitutional because his sentence does not take into account the *Miller* factors, including the lack of maturity and responsibility that he had as a thirteen-year-old boy.

The Eighth Amendment guarantees stem from the fundamental precept that a penalty should be individually proportioned to the offense and the offender. *Miller*, 567 U.S. at 469. The statute at issue, however, precludes the trial court from taking into account these factors by mandating a minimum sentence of 25 years.

The Washington Supreme Court addressed the issue of statutory mandates related to sentencing for juveniles in *Washington v. Houston-Sconiers*, 391 P.3d 409, 414 (Wash. 2017). The court stated that the sentencing court's hands were not tied because under the Eighth Amendment, sentencing courts must have absolute discretion when sentencing juveniles in adult court. *Id.* The mandatory nature of the sentence violated the Eighth Amendment. *Id.* at 422. The Iowa Supreme Court reached a similar result when holding that all mandatory minimum sentences for juveniles violate the cruel and unusual punishment clause of the Iowa Constitution. *Iowa v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014). "Mandatory minimum sentences for juveniles are simply too punitive for what we know about juveniles." *Id.* The Iowa

Supreme Court aptly noted, “the heart of the constitutional infirmity with the punishment imposed in *Miller* was its mandatory imposition, not the length of the sentence. The mandatory nature of the punishment establishes the constitutional violation.” *Id.* at 401. “*Miller* is properly read to support a new sentencing framework that reconsiders mandatory sentencing for all children. Mandatory minimum sentencing results in cruel and unusual punishment due to the differences between children and adults. This rationale applies to all crimes, and no principled basis exists to cabin the protection only for the most serious crimes.” *Id.* at 402.

Historically acceptable sanctions resulting in the harshest sentences are now under constitutional scrutiny throughout the country when applied to juvenile offenders. The Iowa Supreme Court ruled that a juvenile offender serving a 52½ year sentence violated *Miller* protections. *Iowa v. Null*, 836 N.W.2d 41, 71 (Iowa 2013); see also *Ohio v. Moore*, 76 N.E.3d 1127, 1141 (Ohio 2016); *New Jersey v. Zuber*, 152 A.3d 197, 215 (N.J. 2017). Critically, in another case, a juvenile offender serving life with parole eligibility after 25 years was not consistent with *Miller* because the state’s parole policies had no protections for juvenile offenders. *Atwell v. Florida*, 197 So. 3d 1040, 1042 (Fla. 2017).

There is no doubt that Mr. Lewis has now experienced cruel and unusual punishment in violation of his Eighth Amendment rights. Precedent from this Court has established that juveniles have an expectation of release from prison if they demonstrate maturity and rehabilitation, but Mr. Lewis’ sentence does not allow for his demonstrated rehabilitation to constitutionally be taken into account.

While trial counsel fought vigorously for Mr. Lewis to not be sentenced as an adult, it was objectively unreasonable to not challenge the constitutionality of the statute. It violates the Eighth Amendment to force a trial court to sentence a juvenile as an adult to a minimum of 25 years without allowing the trial court the discretion to consider the attributes of youth. Mr. Lewis has been prejudiced because he is serving a lengthy prison sentence that violates the mandates that require courts to consider the mitigating factors of youth. This was stripped from the trial court and must now be rectified.

### CONCLUSION

Mr. Lewis' remorse for the loss of Ms. Johnson's life is genuine. He lives every day knowing that, as a juvenile, he played a role in a situation that resulted in Ms. Johnson's tragic and untimely death. He does not in any way intend to minimize this loss., but his sentence is a violation of the law and unconstitutional. By requiring the trial court to impose a minimum of 25 years in prison, the trial court was stripped of its ability to sentence Mr. Lewis in accord with the mandates of this Court.

Respectfully submitted,

**CHARTIER & NYAMFUKUDZA, P.L.C.**

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By: /s/MARY CHARTIER  
Mary Chartier