NO. 20-7718

IN THE

SUPREME COURT OF THE UNITED STATES

DEIDRE A. PIERRE—PETITIONER

VS.

FREDERICK BOUTTÉ—RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI FROM THE

LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Deidre Pierre

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P.O. Box 26
St. Gabriel, Louisiana 70776

QUESTION(S) PRESENTED

1. Whether the Eighth Amendment to the United States Constitution and Article I, Section 20, of the Louisiana Constitution prohibits the imposition of excessive or cruel punishment in light of the retroactivity of the *Miller* mandate concerning this twenty three year old in light of recent developments of adolescent brain science and R.S. 15:574.4 D?

2. Whether it is truly constitutional for petitioner to spend the rest of her days in prison without ever having had the opportunity to challenge why her trial judge chose the irrevocability sentence of life without parole over the hope of freedom after 20, 25, or 30 years when the law, after all, granted the trial judge the discretion to impose these lower sentences when counsel fails to present evidence on his clients behalf at sentencing?

3. Whether lower courts erred in denying petitioner's motion to correct illegal sentences and enhancement when Counsel failed to present mitigating evidence on her behalf and then Honorable Judge failed to articulate any reasons for sentences and enhancement imposed violated petitioner's Fifth, Eighth, Sixth, and Fourteenth Amendment to the Louisiana and United States Constitution in light of *Miller, Montgomery, Harris, Dorothy, Mosby, Sepulvado, Esteen, Atkins?*

4. Whether petitioner's rights under the Fifth, Eighth, Sixth, and Fourteenth Amendment to the Louisiana and United States Constitutions were violated in light of ambiguities concerning the *Miller* mandate, *Atkins*, and *Montgomery, Harris, Dorothy, Mosby, Sepulvado, Esteen*, C.Cr. P. Art. 883, and R.S. 15:529.1 ?

5. Whether the lower courts determination to deny relief to a twenty three year old runs afoul of the Eighth Amendment right to the Constitution?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

District Attorney of Lafayette
Keith Stutes
P.O. Box 3306
Lafayette, LA 70502

District Court Judge
Michelle Braud
P.O. Box 2009
Lafayette, LA 70502

Supreme Court of Louisiana
Clerk of Court
400 Royal Street, Suite 4200
New Orleans, LA 70130-8102

Court of Appeal, Third
P.O. Box 16577
Lake Charles, La 70616

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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

[ ] For cases from the federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix **A** to the petition and is *State v. Deidre Pierre*, on 12-9-20.

[X] reported at _____ or, **2020 - KH-01107**

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Third Circuit Court of Appeal appears at Appendix **B** to the petition and is *State v Deidre Pierre* on November 9, 2018.

[X] reported at _____ ; or **KH 19-00219**

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Appendix No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from state courts:

The date on which the highest state court decided my case was the Louisiana Supreme Court, NO:. **2020 - KH-01107**. A copy of that decision appears at Appendix **C.**

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Appendix No. _____ _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V

U.S. Const. Amend. VI

U.S. Const. Amend. VIII

U.S. Const. Amend. XIV

Article I, Section 20 of the Louisiana Constitution of 1974

Sixth Amendment to the Louisiana Constitution

Fourteenth Amendment to the Louisiana Constitution

Fifth Amendment to the Louisiana Constitution

C.Cr.P. Art. 930.8

C.Cr.P. Art. 883

R.S. 15:529.1

R.S. 15:574.4(D)(1)

R.S. 15:574.4 (H)

R.S. 14:30.1

R.S. 14:27

PROCEDURAL HISTORY

Deidre Pierre was originally indicted on June 18, 1998, with one count of first degree murder in violation of La.R.S. 14:30 and one count of attempted first degree murder in violation of La. R.S. 14:27 and 14:30. Public Defender Lawrence Billeaud was appointed to represent petitioner.

On December 10, 1999, the indictment was amended to reduce the charges to one count of second degree murder in violation of La.R.S. 14:30.1 and one count attempted second degree murder, a violation of La.R.S. 14:27 and 14:30.1. Public Defender Gregory L. Thibodeaux was assigned to represent petitioner. Counsel pled not guilty and not guilty by reason of insanity. A bench trial commenced with the Honorable Judge Herman Clause on September 10, 2001, and on September 11, 2001, petitioner was found guilty as charged on both counts. Counsel filed a motion for a new trial, that was filed December 6, 2001, was denied. Counsel waived the twenty-four-hour delay, and the trial court sentenced petitioner to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on the conviction of second degree murder and to ten years at hard labor without the benefit of parole, probation, or suspension of sentence on the conviction for attempted second degree murder, to be served consecutive to the life sentence. At sentencing, Counsel objected to the said sentences whereas the Honorable Judge allowed an unspecified amount of time for counsel to file a motion with supporting documentation; however, counsel did nothing. Appeals ensued but were denied on excessive claims.

On direct appeal, the Appellate Project litigated that the record did not show that she knowingly and intelligently waived her right to a jury trial. The appellate court agreed: it reversed and set aside her convictions and sentences, and remanded the case for a new trial. *State v. Pierre,* 827 So. 2d 619, 623 (La. App. 3d Cir. 2002). The State filed a writ application to the Supreme Court of Louisiana seeking review of the appellate court's judgment. The Supreme Court

of Louisiana granted the writ, reinstated Pierre's convictions, and sentences, and remanded to the appellate court for consideration of the other claims raised on appeal. *State v. Pierre,* 842 So. 2d 321, 322 (La. 2003) (per curiam). On remand, the appellate court affirmed Pierre's convictions and sentences. A writ of certiorari to the Supreme Court of Louisiana was denied and attempts to obtain state post-conviction relief were unsuccessful although the District Court granted an evidentiary hearing on ineffective assistance of counsel. A notice of intent ensued. The Third Circuit granted writ on the claims on ineffective assistance of counsel for failing to present any evidence or testimony (lay or expert) concerning the insanity defense and battered woman's syndrome.

A petition timely filed for writ of habeas corpus in the federal district court and denied. A request for a certificate of appealability was filed. It was the Federal Court that found a "substantial showing of the denial of [her] constitutional right" to a jury trial. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). Accordingly, a certificate of appealability was granted on the issue of whether the record showed that petitioner knowingly and intelligently waived her right to a jury trial. Ultimately relief was denied henceforth.

Petitioner filed a motion to correct an illegally excessive and harsh sentence in the district court. A denial was rendered January 30, 2019. Petitioner timely filed a notice of intent in the district court and thereinafter filed a timely writ to the Third Circuit Court of appeal on March 2019. A denial was rendered on May 20, 2020. Timely writs followed to the Louisiana Supreme Court which was denied December 9, 2020. This instant writ is timely filed in the United States Supreme Court on or before 90 days of the said Louisiana Supreme Court denial as signed and dates herein on February 26, 2021.

REASONS FOR GRANTING THE PETITION

This Honorable Court has decided the merits of the *Graham, Miller and Montgomery,* in addition to the retroactive applicability of *Miller* that violated the Eighth, Fourteenth, Sixth and Fourth Amendments to the Federal and State Constitution. Pursuant to *Miller's* retroactive affects and petitioner's documented **cognitive immaturity and psychomotor retardation for her age and high school education** at twenty three years old in addition to being pregnant and suffering decades of abuse in light of recent research on brain development the lower court's decision to ignore these factors runs afoul of the Eighth Amendment protections accorded to "juveniles" when sentenced to life without benefits and an enhancement.

This Honorable Court did not draw a line at the age of eighteen.[1] In addition, no one above the ages of 18-25 year-old were excluded from the *Miller's* holding with respect to a mandatory sentence of life imprisonment for the same. It was in fact legislators that drew the line at eighteen years old as a result of ambiguities in the definitions used in the said decisions of *Graham, Miller*, and *Montgomery*.[2] With the said ambiguities and argument presented herein, and the fact that Louisiana has long since repealed their indeterminate sentencing provision resulting in confusion, in addition to Louisiana's history of being "tough on crime" with concerns of recidivist since *Furman v Georgia*, 408 US 238, 33 L Ed 2d 346, 92 S Ct 2726, the lower court's decision to deny mandates of youth "and **all** that accompanies it" violates the mandates rendered by this Honorable Court.

Petitioner contends that the line drawn at eighteen in light of expert evidence and the

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[1] Acts 2012, No. 466, the Louisiana legislature amended R.S. 15:574.4

[2] *State v. Cage,* (12-11-89), 554 So. 2d 39; 1989 La. LEXIS 2949, age 19; *Sate v. Messiah,* (12-12-88), 538 So. 2d 175; 1988 La. LEXIS 2438, age 25.

definition of juvenile/youth/adolescent/youthfulness/child results in ambiguity.[3] In *Tutson*, a neuroscience publication from 2013 discussing the "adolescent brain," the following was stated:

> . . . It is well established that the brain undergoes a "rewriting" process that is not complete until approximately 25 years of age. [footnote omitted]. The discovery has enhanced our basic understanding regarding adolescent brain maturation and it has provided support for behaviors experienced in late adolescence and early adulthood. Several investigators consider the age span of 10-24 years as adolescence, which can be further divided into substages specific to physical, cognitive, and social-emotional development. [footnote omitted].[4]
>
> In the same article it is stated "[t]he fact that brain development is not complete until near the age of 25 years refers specifically to the development of the prefrontal cortex," which happens to be responsible for many things, including "the moderation of correct behavior." In discussing "behavioral problems and puberty," the article states that, because adolescents rely heavily on the emotional regions of their brains, it can be challenging for them to make decisions that adults consider logical and appropriate. Id.
>
> The very fact that the brain does not reach maturity until the age of twenty-five leads to the conclusion that younger persons have a very real capacity to change and moderate their behavior as they age. In other words, they have great potential for rehabilitation. *State v Tutson*, (Cir. 3rd, 3-7-19), 270 So 3d 684; 2019 La App LEXIS 437.
>
> For example, *Merriam Webster's Dictionary of Laws* (2016) defines youthful as:
>
> "A young person (as one statutorily specified age range) who commits a crime but is granted special status entitling him or her to a more lenient punishment (as one involving probation or confinement in a special youth correctional facility) that would otherwise be available- compare Juvenile Delinquent, Status Offender ♦ Young individuals who are no longer juveniles may be categorized as youthful offenders. Youthful offender treatment is generally designed to free a young person from the negative consequences of being convicted and punished as an adult, in the hope that she or she will be rehabilitated. Factors in the determination of youthful offender status include the crime and the criminal history of the individual."

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[3] When two or more interpretations of a criminal statute are possible, the one construed in the light most favorable to the defendant applies. It is a well-established tenet of statutory construction that criminal statutes are subject to strict construction under the rule of lenity. *State v. Carouthers,* 618 So.2d 880, 882 (La. 1993). Thus, criminal statutes are given a narrow interpretation and any ambiguity in the substantive provisions of a statute as written is resolved in favor of the accused and against the State. *State v. Becnel,* 93-2536, p. 2 (La. 5/31/96), 674 So.2d 959, 960; *Chevalier v. L. H. Bossier,* 95-2075, p. 6 (La. 7/2/96), 676 So.2d 1072, 1076 (citing *State v. Piazza,* 596 So.2d 817, 820 (La. 1992)).

[4] Arian, Miriam et al., *Neuropsychiatric Disease and Treatment, Maturation of the Adolescent Brain,* published online on 4/3/2013, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648

Since treating doctors deemed petitioner to be immature, impulsive, psychomotor retarded and irrational at the time of the offense for her age and high school education, petitioner filed a motion to correct an illegal sentence in light of new developments in the Eighth Amendment jurisprudence in this 1998 pre-*Miller* case.[5] Petitioner presents:

> "Youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. An offender's age is relevant to the Eighth Amendment, and so criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Miller*, supra.

Petitioner states that juvenile justice system dates back to the early 1900's, as a way to nurture and rehabilitate youthful offenders. In erecting this youthful offender mechanism, constant studies were developed in treatment and sentencing. The same is seen in light of the historical perspective in overturning the unanimous jury verdict in U.S. v. *Ramos,* 590 U.S. , (2020). For this reason, it is incumbent to review merits concerning this black female from a lower socioeconomic level that was suffered abuse and mental illness since her youth until adulthood in light of the *Miller* mandate, ambiguities and counsel waiving her jury trial and electing a bench while failing to present any evidence or testimony on his clients behalf. *State v. Pierre,* 827 So. 2d 619, 623 (La. App. 3d Cir. 2002).

At the time of the offense, petitioner was twenty three years and five months old. Dr. Mark Warner and Dr. William Carrington deemed that petitioner was immature, impulsive, and severely psychomotorly retarded **for her age and high school education.**[6] Petitioner was

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[5] Although an illegal sentence "is primarily restricted to those instances in which the term of the prisoner's sentence is not authorized by the statute or statutes which govern the penalty," *State v. Mead*, 2014-1051, p.3 (La.App. 4 Cir. 4/22/15), 165 So.3d 1044, 1047, in *Montgomery v. Louisiana*, 577 U.S. , 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), the United States Supreme Court reiterated that a substantive rule of constitutional law, such as that introduced in *Graham*, is reviewable at any time.

[6] *See* U.S. National Library of Medicine, at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3646325/ ("Psychomotor retardation is a long established component of depression that can have significant clinical and therapeutic implications for treatment. Manifestations of psychomotor retardation include slowed speech, decreased movement, and impaired cognitive function."). A court may take judicial notice of factual information located in postings on government websites. *See Phillips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts may "take judicial notice of matters of public record").

documented as severely cognitively impaired. This documentation however was never considered and is pre-*Miller*. Petitioner was also incompetent for some time requiring extensive treatment, therapy, medication, with grief and crisis counseling. As an underlying cause of mental illness, records revealed petitioner was raped at a young age and that the rape precipitated her mental health deterioration. When Petitioner was **nineteen years old**, she was hospitalized for a Major Depressions and a suicide attempt, before the rape was ever exposed.[7] Shortly thereafter, petitioner met Anthony, became pregnant with Avante' and the couple later married. Within seven months of marriage, petitioner was hospitalized at Vermillion Psychiatric and Addictive Medicines. Among the issues addressed were the rape, Anthony's alcohol abuse and physical abuse inflicted upon petitioner. In just a short time, abuses escalated to the point of Anthony physically hurting three year old Avante' while under the influence of alcohol which prompted petitioner to flee to her parents. Due to ambiguities in domestic violence matters, the Louisiana Supreme Court clarified the need for expert testimony and evidence on behalf of a client. *State v. Curley,* 250 So. 3d 236; 2018 La. LEXIS 1686 (7-27-18). Regardless, the lower court's choosing to ignore this evidence when the evidence supports *Curley* and *Miller:*

"...qualities that distinguished juveniles from adults do not disappear when an individual

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[7] As further explained in *Wilson*:
Contemporary standards as defined by the legislature indicate that the harm inflicted upon a child when raped is tremendous. That child suffers physically as well as emotionally and mentally, especially since the overwhelming majority of offenders are family members. Louisiana courts have held that sex offenses against children cause untold psychological harm not only to the victim but also to generations to come. "Common experience tells us that there is a vast difference in mental and physical maturity of an adolescent teenager . . . and a pre-adolescent child . . . It is well known that child abuse leaves lasting scars from generation to the next . . . such injury is inherent in the offense." *State v. Brown*, 660 So.2d 123, 126 (La.App. 2 Cir. 1995). ". . . Aggravated rape inflicts mental and psychological damage to its victim and undermines the community sense of security. The physical trauma and indignities suffered by the young victim of this offense were of enormous magnitude . . ." *State v. Polkey*, 529 So.2d 474 (La.App. 1 Cir. 1988). " Rape trauma syndrome, a well-recognized pattern of symptoms used to describe the emotional and psychological responses that a person may experience before, during, or after {2011 U.S. Dist. LEXIS 9}a rape, includes the inability to form clear and vivid memories of the event. *See* Morrison Torrey, *When Will We Be Believed? Rape Myths & The Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. Davis L. Rev. 1013, 1044 & n. 150 (1991). *See also* Arthur H. Garrison, *Rape Trauma Syndrome: A review of Behavioral Science Theory and Its Admissibility in Criminal Trials*, 23 Am. J. Trial Advoc. 591, 618-22 (2000). See also *State v. Norell*, 614 So. 2d 755; 1993 La. App. LEXIS 725, rape of 14 year old affects victim for the rest of victim's life.

turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood." *Roper, supra.*

For these reasons, the mandate of *Miller* must apply due to ambiguous and interchangeable use the words and definitions of youth, juvenile, adolescent, youthfulness, and children according to Ballantine's Law Dictionary, 3rd. Edition. [8] In fact, in Roman law minor is someone who is past puberty but less than twenty five years old.[9] In many ways, the inquiry posited by *Miller* presumes a youthful offender and asks a district court judge to predict what may occur in the course of a future incarceration. *Miller, supra.* Petitioner further notes that Dr. Mark Warner stated:

> "...Ms. Pierre exhibits chronic history of maladjustment since her childhood. She was hospitalized in New Orleans following a suicide attempt by overdose. Records reveal a long history of chronic depression, poor stress coping skills and patterns of behavior consistent with Borderline Personality Disorder...."
>
> "...The latter is considered a pervasive maladaptive pattern of learned behavior that is characterized by a pattern of instability and interpersonal relationships, self-image, and marked impulsivity beginning in adolescence and characterized by affective or mood instability, difficulty controlling anger, transient stress-related paranoid ideation or dissociative symptoms, repeated suicidal gestures or threats, and intensely interpersonal relationship..."
>
> "...Instead, it is highly unlikely that she acted impulsively and irrationally without specific intent to commit murder. As a result, she is likely to have difficulty making the connection between her behavior and the consequences of her acts which will impair her ability to recover from her depression and personality disorder..." [10]

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[8] A juvenile subject to parental control or guardianship. *State v Gonzales*, 241 La 619, 129 So 2d 796, 84 ALR2d 1248; one under the age of puberty, or not old enough to dispense with parental aid or care. *Central of Georgia R. Co. v Robins,* 209 Ala 6, 95 So 367, 36 ALR 10; a person of tender years, as distinguished from a youth, who, although legally an infant, possesses the size and strength of a man. 27 Am J1st Inf § 112; a son or daughter of a person, whether infant or adult. 2 Am J2d Adopt § 11; 39 Am J1st P & C § 2; a natural child, as distinguished from a child by adoption, unless the context of an instrument in question indicates an intention to include an adopted child or to use the term child in a more extensive sense than its natural import, or such intention is to be inferred from the attendant circumstances, or such a construction is required by a statutory definition. 2 Am J2d Adopt § 96; a word which is not a technical legal term having a fixed and definite meaning, but one which is flexible and subject to construction to give effect to the intention of the maker of the instrument in which it appears.
Bobby Jerry Tatum, Petitioner v. Arizona, No. 15-8850, (October 31, 2016), 137 S. Ct. 11; 196 L. Ed. 2d 284; 2016 U.S. LEXIS 6492; 26 Fla. L. Weekly Fed. S 385

[9] Garner Bryan A., Black's Law Dictionary, 10th Ed. (Thomson Reuters: St. Paul, MN, 2014)

[10] Thus, we are faced with a classic case where the longstanding "rule of lenity" is appropriately applied. Simply put, that rule provides that "ambiguities in criminal statutes must be resolved in favor of lenity" for the criminal defendant. *United States v. Batchelder*, 442 U.S. 114, 121, 60 L. Ed. 2d 755, 99 S. Ct. 2198 (1979); *Ladner*

The abundance of documents from the sanity commissioner Dr. Warner and the East Feliciana Psychiatrist Dr. Carrington deemed there was no evidence of malingering and both described this twenty three year old female was adolescent, youth, immature, impulsive among other terminology identical to *Miller, Montgomery,* and *Graham's* definitions of a "juvenile" **but over** the age of eighteen. The holding to juveniles being decided by chronological age is derived from ambiguous words gleamed from this Court mandate when "youth is more than chronological age" and in light of matters addressing the death penalty...not a single life sentence and enhancement that was inapplicable to petitioner. Importantly, petitioner has never even lived by herself. She was under the care of adults (i.e. in laws, husband, family) because she was unable to hold a steady job, or support herself and her son due to mental health reasons. Doctors (Warner) also stated that with treatment, there was a strong probability that petitioner would be rehabilitated. In support and as evidenced of "juvenile" and "youth" rehabilitation for this now forty six years old, on August 18, 2018, clemency was granted by all clemency board members upon examination of records inclusive of testimony from petitioner, staff, family, potential employers, probation and parole and pardon board experts concerning mental health and abuse. *Curley*; *Miller, Graham* supra.[11] However, with the unique circumstances of this case and the legislature failing to meaningfully tailor sentences in support of this twenty three year old juvenile female at the time of the crime in light of *Miller is* error.

> "This Court explained that a life sentence without parole "deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency-the remote possibility of which does not mitigate the harshness of the sentence. *Id.,* 560

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v. United States, 358 U.S. 169, 177, 3 L. Ed. 2d 199, 79 S. Ct. 209 (1958) ("Neither the wording of the statute nor its legislative history points clearly to either [of two permissible] meanings. In that circumstance, this Court applies a policy of lenity and adopts the less harsh meaning."); see also *United States v. Campos-Serrano*, 404 U.S. 293, 297, 30 L. Ed. 2d 457, 92 S. Ct. 471 (1971); *United States v. Wiltberger*, 18 U.S. 76, 95, 5 L. Ed. 37 (1820); *United States v. Abreu*, 962 F.2d 1447, 1450-51 (10th Cir. 1992){1993 U.S. App. LEXIS 24} (en banc) (discussing Supreme Court authority on "rule of lenity"); Annotation, 62 L. Ed. 2d 827.

[11] *Graham* makes clear that the ad hoc exercise of the executive's power of commutation does not afford juveniles sufficient protection, and such inmates have nowhere else to go for relief other than the judiciary. *Graham.*

U.S. at ___, 130 S. Ct. at 2027 (citing *Solem v. Helm,* 463 U.S. 277, 300-301, 103 S. Ct. 3001, 3015, 77 L. Ed. 2d 637 (1983).

In the instant case, "there is no way to calculate a parole eligibility date for a life sentence... *considering the governor has still not signed her pardon some three years later in the wake of the Covid-19 pandemics.*"[emphasis added}.[12] This holds truth that all juveniles up to twenty five years old be included just as Louisiana Supreme Court Justices declared in reversing and remanding the case in *State v Montgomery* (6-28-16), 194 So. 3d 606; 2016 La. LEXIS 1539:

> "It is an unfortunate truth that there will certainly be some inmates that demonstrate irretrievable depravity, that have set forth zero effort towards rehabilitation and redemption, and are simply not ready for a parole eligible adjudication. On the other hand, there will be some who were the victims of their own once transient immaturity and regrettable impulsivity, long since passed, that present the lowest risk designation based on their rehabilitative progress through the years. Whatever the result may be, all such inmates that committed homicide when they were juveniles are entitled to a "meaningful opportunity {194 So.3d 611} to obtain release" based on "demonstrated maturity and rehabilitation" as required by *Miller*, 132 S. Ct. at 2469 (quoting *Graham v. Florida*, 560 U.S. 48, 74, 130 S. Ct. 2011, 2030, 176 L. Ed. 2d 825 (2010))."

At present, petitioner is forty six years old and is suffering from health ailments. At the time of arrest, petitioner was a few months into her twenty third birthday with no recourse for relief. Regardless, the Supreme Court went a step further and decided in *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) that a sentencing scheme which requires life without parole for a defendant convicted of a homicide committed as a juvenile is unconstitutional. *Miller* requires a sentencing court to examine a juvenile homicide offender's "diminished culpability and heightened capacity for change" and only thereafter be in a position to find he is "the rare juvenile offender whose crime reflects irreparable corruption" and who deserves to die in prison. *Miller*, 567 U.S. at 480, 132 S. Ct. at 2469.[13] In this instant case, the Honorable Judge did

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[12] Graham, supra., P. G Annino, D.W. Rasmussen, & C.B. Rice, Juvenile Life Without Parole for Non-Homicide Offenses: Florida Compared to the Nation, Public Interest Law Center, College of Law, Florida State University (2009).

[13] In *Miller*, the Supreme Court referenced *Roper v. Simmons*, 543 U.S. 551, 569-570, 125 S. Ct. 1183, 1195, 161 L. Ed. 2d 1 (2005) and *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2012) and noted:

not review the said records and counsel did not submit them at sentencing as he believed he has a diminished capacity defense that was not recognized when pleading the dual plea of not guilty and not guilty by reason of insanity. Thus, although *Miller* did not foreclose the possibility of life without parole for a juvenile homicide offender, it further emphasized that a lifetime in prison is an unconstitutional sentence for all but the rarest juvenile offender. *Id.* (quoting *Roper*, 543 U.S. at 573, 125 S. Ct. at 1197). It has been held that *Roper, Graham*, and *Miller* signify "a shift in the nation's moral tolerance" when it comes to the sentencing of juvenile offenders. *State v. Springer*, 2014 SD 80, 856 N.W.2d 460, 465 (S.D. 2014), *cert. denied,* U.S. , 135 S. Ct. 1908, 191 L. Ed. 2d 775 (2015). In addition, *Atkins* also supports the same since:

> "In light of some deficiencies of persons who were mentally retarded with respect to information processing, communication, abstract and logical reasoning, impulse control, and understanding of others-which deficiencies diminished such persons' culpability-(a) it was questionable whether the death penalty's retribution and deterrence justifications were applicable to such offenders, and such offenders faced a special risk of wrongful ex-

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Those cases [*Roper* and *Graham*] relied on three significant gaps between juveniles and adults. First, children have a "'lack of maturity and an underdeveloped sense of responsibility,'" leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569, 125 S. Ct. 1183. Second, children "are more vulnerable ... to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." *Id.*, at 570, 125 S. Ct. 1183.

Our decisions rested not only on common sense-on what "any parent knows"-but on science and social science as well. *Id.*, at 569, 125 S. Ct. 1183. In *Roper*, we cited studies showing that " '[o]nly a relatively small proportion of adolescents' " who engage in illegal activity " 'develop entrenched patterns of problem behavior.' " *Id.*, at 570, 125 S. Ct. 1183 (quoting Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)). And in *Graham*, we noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"-for example, in "parts of the brain involved in behavior control." 560 U.S., at 68, 130 S. Ct., at 2026. We reasoned that those findings-of transient rashness, proclivity for risk, and inability to assess consequences-both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his " 'deficiencies will be reformed.' " *Id.*, at 68, 130 S. Ct. at 2027 (quoting *Roper*, 543 U.S., at 570, 125 S. Ct. 1183).*Id.*, 132 S. Ct. at 2464-2465 (footnote omitted). *Miller* noted the science and social science supporting the conclusions made by the Supreme Court in *Roper* and *Graham* had become even stronger. *Id.*, 132 S. Ct. 2464 n.5. Compelling statistical support for these differences between juveniles and adults may also be found in *National Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5th Cir. 2012) (finding the federal statute prohibiting federally licensed firearms dealers from selling handguns to persons under age 21 does not violate the Second Amendment) and *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009), *cert. denied*, 558 U.S. 1133, 130 S. Ct. 1109, 175 L. Ed. 2d 921 (2010) (Juvenile Delinquency Act ban of juvenile possession of handguns did not violate the Second Amendment). *Id.*, 311 So.2d at 865.

ecution, due to their lesser ability to make a persuasive showing of mitigation." *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335.[14]

Petitioner's case is no different warranting relief on this life sentence without benefits consecutive to ten years when counsel presents no records or testimony on his client's behalf and no articulation is made at sentencing pursuant to C.Cr.P. Art 833 and C.Cr.P. 894.1 resulting in illegal and indeterminate sentences.[15] When:

> "there was some question at sentencing as to whether consecutive or concurrent sentences {2013 U.S. Dist. LEXIS 23}were appropriate under state law, Judge Crichton stated that, given Petitioner's mental status, he believed concurrent sentences were appropriate, and those sentences were imposed. *Beaner v Louisiana State Penitentiary*, (7-25-13), 2013 US Dist LEXIS 115741. Without articulation, courts usually remand to the lower court for a valid sentence however since the sentence of life in prison is the mandatory maximum and minimum sentence, Judges are unwilling to address the issues. Regardless of arguments presented to the lower courts, petitioner's claims present valid constitutional claims as well as claims for mitigation that was prejudicial to petitioner. *Wiggins v Smith* 539 US 510, 156 L Ed 2d 471, 123 S Ct 2527, (2003); *Walbey, Jr. vs. Quarterman*, (2-20-08), 2008 US Dist LEXIS 106679.

As a youthful first offender, petitioner received sentences recidivist receive under R.S. 15:529.1.[16] Some states, legislatures have responded to recidivist concerns by passing the "three strikes and you're out" legislation for sentences of life imprisonment for a third felony offender."

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[14] Wiley v. Epps, 625 F.3d 199, 207 (5th Cir. 2010) ("[E]ven though Atkins left to the states the job of implementing procedures for determining who is mentally retarded, 'it was decided against the backdrop of the Supreme Court's and lower court's due process jurisprudence.'" (emphasis added) (quoting Rivera v. Quarterman, 505 F.3d 349, 358 (5th Cir. 2007))). Accordingly, the states retain substantial discretion to create appropriate procedures, but they may not substantively redefine mental retardation so as to permit the execution of those who "fall within the range of mentally retarded offenders about whom there is a national consensus." Atkins, 536 U.S. at 317.

[15] See generally *State v. Baham*, 14-0653 (La.App. 5 Cir. 3/11/15), 169 So.3d 558 (if trial court elects to impose consecutive sentences for single course of conduct, it must articulate its reasons), *writ denied*, 15-0040 (La. 3/24/16), 190 So.3d 1189; see also *State v. Brown*, 15-0096 (La.App. 5 Cir. 9/15/15), 173 So.3d 1262 (same); *State v. Harris*, 11-0626 (La.App. 5 Cir. 11/27/12), 105 So.3d 914 (same); *State v. Blanchard*, 03-0612 (La.App. 5 Cir. 11/12/03), 861 So.2d 657 (same); cf. *State v. Cornejo-Garcia*, 11-0619 (La.App. 5 Cir. 1/24/12), 90 So.3d 458 (if trial court elects to impose consecutive sentences for single course of conduct, it must articulate its reasons, *though failure does not require remand if the record provides an adequate factual basis to support the consecutive sentences*). Because the record does not contain an adequate basis for the trial court's decision here, a remand for articulation of reasons is necessary.

[16] *State v Derrick L. Harris,* (7- 9 -00), 2020 La LEXIS 1348, *State v. Bryant*, 802 So.2d 627, 2001 La. LEXIS 3238 (La., Nov. 21, 2001) Post-conviction relief denied at *State v. Bryant*, 2019 La.App. LEXIS 2084 (La.App. 2 Cir., Nov. 20, 2019)

Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); See *Booker,* 125 S. Ct. at 756; *Blakely*, 124 S. Ct. at 2536-43. As seen in cases of habitual offenders *Derrick Harris* and *Fair Wayne Bryant*, who were originally sentenced to life and have since challenged the sentence, both have since been released from incarceration when both were proven to have blatant disregard to laws warranting a harsh punishment, yet both received leniency and were released. Such is not the case for petitioner as a result of the legislatures excluding twenty three year olds from Miller's mandate in spite of prevailing evidence in support of petitioner's documented history of a juvenile/youth/adolescent beyond the age of eighteen but below twenty six in light of legislation contrary to the dictates of this Honorable Court.

Petitioner reiterates that the Court in *Roper* concluded that since juveniles have reduced culpability, punishment for juveniles must reflect their lesser blameworthiness, and in light of these innate characteristics of youth, juvenile offenders cannot be subjected to the harshest penalty reserved for the most depraved offenders. *Id.* at 569. In the instant case, documentation states petitioner **"had no specific intent to harm anyone but was instead upset, impulsive and irrational"** and is not the worst type of offender when looking at mental health records and the ex-husband also allowing petitioner permission to have contact with her new born son in light of these juvenile tendencies as well as his repeated abuse upon petitioner and ultimately Avante'. As seen in the record, petitioner was hysterical after learning her son was shot and ultimately died whereas petitioner needed years of crisis counseling and treatment. Even upon entering an adult prison and mental health issues arose, petitioner, under the care of prison staff, received the treatment, medication, and education needed to overcome the effects of being raped at an early age, abused throughout childhood where Social Services became involved and abused by her husband, forced abortion, and death of Avante, etc.

In light of *Roper* and *Graham*, in *Miller v. Alabama*, 567U.S.460 , 132 S. Ct. 2455,

2464, 183 L. Ed. 2d.407 (2012), the U.S. Supreme Court found sentences of mandatory life imprisonment without parole for juvenile homicide offenders violated the Eighth Amendment. In several instances, the state courts and legislatures defined juveniles as persons under the age of 18 years old. The provision of law exists remedying any Miller violation by providing for respondent's parole, eligibility. Louisiana Revised Statute 15:574.4(D)(1) provides:

> Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment who was under the age of eighteen years at the time of the commission of the offense, except for a person serving a life sentence for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1), shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met....Respondent is a person serving a sentence of life imprisonment who was under the age of eighteen years at the time of the commission of the offense. Therefore, he shall be eligible for parole consideration pursuant to the provisions of the subsection.

At the other end of the spectrum, the Louisiana Supreme Court has also addressed youthfulness when over eighteen years of age when looking at life in numbers.[17]

> (life in numbers such as 99 years). This right flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned" to both the offender and their offense. Ibid. (quoting *Weems v. U.S*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L. Ed. 793 (1910), *State v. Cedars,* 2017 La. App. Unpub. Lexis 230 (KH-16-1044; 2017)

In 2018 it was reported that California built on this precedent by directing individuals convicted under 26 to Youth Offender Parole Hearings.[18] Similarly, one scholar has opined:

> "At least in jurisdictions without generous early release provisions, life sentences are practically akin to "death-in-prison sentences" or necessarily beget "death by incarceration." A "life term" is a cultural artifact, signifying the recipient's penal servitude until the end of his natural life. In other words, the State is thereby proactively and physically condemning the individual to die within prison walls. {2018 U.S. Dist. LEXIS 23} One author posits a life sentence is merely "a semantically disguised sentence of death." For the foregoing reasons, the availability of a life sentence has been referred to as

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[17] *State v. Stokes*, (La., May 28, 2019) 2019 La. LEXIS 1721; *State ex rel. Alden Morgan v. State*, (10-16-16), 217 So.3d 266, 2016 La. LEXIS 2077

[18] Gingrich, N. (2015-April 13). A second chance for young offenders. HuffPost. Retrieved from http://www.uffingtonpost.com

the "new death penalty" or the "other death penalty."

Alternatively, commentators have contended that life sentences can be more punitive than capital punishment, while receiving far fewer substantive and procedural protections. Professor Berry reasonably notes how a life sentence may be experienced by prisoners as extra brutal: "A death sentence has an end date, which for some may be less traumatic than imprisonment until one dies of natural causes. To the extent that living in prison constitutes suffering, life without parole allows for greater suffering, or at least a longer time for suffering." Compared to capital cases, cases resulting in life sentences are procedurally less likely to necessitate individualized attention to the offender's own characteristics, receive careful and extensive review, enjoy lengthy appellate processes, or be reversed. Melissa Hamilton, *Some Facts About Life: The Law, Theory, and Practice of Life Sentences, 20* Lewis & Clark L. Rev. 803, 813-14 (2016) (footnotes omitted)." See *Patrick Matthews v Burl Cain, Warden,* (8-13-18), 337 F. Supp. 3d 687; 2018 U.S. Dist. LEXIS 148234.

In light what is now known in regards to sanctioning a youth to a sentence of life without benefits, petitioner brings to view that the Louisiana Supreme Court has followed the rule and the similar rule against imposition of capital punishment for offenders under 18 years of age. In *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), the U.S. Supreme Court held that "the **death penalty** cannot be imposed upon juvenile offenders" 543 U.S. at 575, 125 S. Ct. at 1198, and the court further drew the line between juvenile and adult offenders at age 18, 543 U.S. at 574, 125 S. Ct. at 1197. *Mill*er requires a court to hold a hearing at which "youth and its attendant circumstances are considered as sentencing factors[.]" Id. at 733-734.

"The rule from *Miller* also applies to a discretionary life without parole sentence, even though *Miller* arose from states that required a sentencing court to impose life without parole on a child. In *Montgomery*, the Supreme Court indicated that *Miller* applies to states with discretionary schemes. The Court held that "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison,{2020 U.S. Dist. LEXIS 15} that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity. *Montgomery,* 136 S. Ct. at 734. Thus, a court "considers a child's age **before** sentencing him or her to a lifetime in prison" in states like Oregon, in which a court has discretion in imposing the sentence. Id.

Petitioner contends that the basis of the *Miller* decision was upon a *Graham's* death penalty. Since then legislatures have implemented legislation based line drawing at 18 with regards

to life sentences when this Honorable Court did not.[19] For a first time offender having never seen the inside of a courtroom or jail, this twenty three year old black female is confined to prison for the remainder of her life although her documented history proves what experts declared concerning 18-25 year olds under decades of physical, mental and psychological abuses. Nonetheless, with this history beginning from rape but hospitalized for the first time at age nineteen further supports the *Miller* mandate must apply to a petitioner under the prevailing research in favor of brain development in light of documented immaturity, poor impulse control, severe psychomotor retardation and diagnosis of Severe Depression, Severe and Recurrent, with psychotic features.

Petitioner contends that the Louisiana Supreme Court drew the line at age 18, well aware of the "objections always raised against categorical rules," id., 543 U.S. at 574, 125 S. Ct. at 1197, driven by two rationales: there was "objective indicia of consensus" against sentencing juvenile offenders to death in that, for example, most States had already rejected that possibility; and the death penalty "is a disproportionate "punishment" because juvenile offenders as a class are less culpable than adult offenders. Id., 543 U.S. at 563-69, 125 S. Ct. 1191-95. The U.S. Supreme Court has drawn the line at 18 years in declaring the prohibition against life imprisonment without benefit of parole for juvenile offenders in *Graham*. The Louisiana Supreme Court has

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[19] *Cruz*; Just as concealed weapons presented a danger to the public order in 1813, they continue to do so, particularly when those weapons are in the hands of impulsive, immature juveniles. Protecting the juvenile population from itself and protecting society-at-large from increased gun violence is now, more than ever, a compelling interest of the government. In *State v. Fluker*, 311 So.2d 863, 865 (La. 1975), this court presented "an historical exegesis of the concealed weapons law in Louisiana." *Fluker* noted "[t]he first statute to proscribe the concealment of weapons was enacted in 1813," the year after Louisiana became a state. *Id.*, 311 So.2d at 865.

In fact, as noted in *State v. Clark*, 391 So.2d 1174,1176 (La. 1980), although the statute in effect at the time of the commission of the offense applies, subsequent amendments have been recognized to be relevant in sentencing: In *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S. Ct. 2909, 2925, 49 L. Ed. 2d 859, 874 (1976) (Opinion of Justices Stewart, Powell and Stevens) [stated that] "an assessment of contemporary values concerning the infliction of a challenged sanction is relevant to the application" of the Eighth Amendment's ban against cruel and unusual punishment. It is no less relevant to the inquiry of whether a particular penalty is excessive. And it has been acknowledged that legislative enactments provide an important means of ascertaining contemporary values. Id. at n. 19. *State v Martin*, (4th Cir., 1-30-02), 809 So. 2d 486; 2002 La App LEXIS 175.

followed that rule and the similar rule against imposition of **capital** punishment for offenders under 18 years of age **without** addressing ambiguities as litigated in this case. In cases concerning second degree murder, nothing has been done to correct the "one strike" law for first offenders whose instant and only offense by legislatures is a mandatory maximum and minimum sentence of life in prison for those offenders 18 -25. The determination as to applicability of this individual offender since the evolution of adolescent brain development has come forth gives reason to deviate from that bright-line rule under the circumstances of these tragedies.

In dismissing the penological justification of incapacitation, the *Graham* court has specifically rejected such premature judgment about a juvenile's lack of potential for growth and maturity. The Supreme Court has reemphasized its express rejection of denying parole eligibility on the ground of incorrigibility, stating that existing state laws, allowing the imposition of these sentences based only on a discretionary, subjective judgment by a judge or jury that the offender is irredeemably depraved, are insufficient to prevent the possibility that the offender will receive a life without parole sentence for which he or she lacks the moral culpability. *Graham v. Florida.*

In the instant case, in spite of all the documentary evidence in petitioner's favor, none of this evidence was presented to the Honorable Judge at trial or sentencing. Counsel also failed to file a motion to reconsider the said sentences after the Honorable Judge allowed an undetermined amount of time in which to file. Instead counsel offered nothing in support of his client and the Honorable Judge believed he had no options but to sentence petitioner to life.

This Honorable Court addressed matters very similar in *State v. Harris* concerning a life sentence and sentencing enhancement when the Honorable Judge believed he could not depart from the mandatory life sentence when counsel failed to inform the court otherwise amounting to

ineffective assistance of counsel under *Strickland* progeny.[20] Without the said evidence being introduced and proffered, the Honorable Court was without available evidence to consider a lesser verdict and/or appropriate sentence in this case. In light of post-conviction evidentiary hearings, the Court deemed petitioner met the first prong of *Strictland.* Since then it was determined that counsel was ineffective in failing to investigate and present available mitigating evidence: Supreme Court's decision in "*Williams [v. Taylor*] ... stands for the proposition that counsel can be prejudicially ineffective even if some of the available mitigation evidence is presented and even if there is psychiatric testimony"). *Walbey v. Quarterman,* 309 Fed. Appx. 795, 2009 U.S. App. LEXIS 942 (5th Cir. Jan. 19, 2009) (per curiam). For this reason, there is no doubt that counsels actions were volatile of the Sixth Amendment to the State and Federal Constitution.

In support, not only did counsel believe that he had a diminished capacity defense and presented nothing on his clients behalf at trial or sentence, there was a plethora of documentation revealing that petitioner as immature for her age (23 years old) , high school education and appearance, in addition to having poor impulse control stemming from when she was raped as a teenager when doctors evaluated her prior to, and after the crime it is inconceivable all evidence withheld proves and supports what experts deemed relevant to including this petitioner in its mandate decades. [21]

In light of the evidence presented, petitioner contends that she has proven the applicability of the retroactivity decision applies to her case. As cited in *Cruz*, "What we do know is that the *Miller* decision is ambiguous and the line drawn by legislatures which excludes 18-25 year olds

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[20]Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

[21] Under Louisiana law, however, "a mental defect or disorder short of insanity cannot serve to negate specific intent and reduce the degree of the crime." *State v. Lecompte*, 371 So.2d 239, 243 (La.1978). See also *Deidre Pierre versus Mariana Leger, Warden,* (May 16, 2011), 2011 U.S. Dist. LEXIS 72071

not only discriminates against this age group, but also leaves open the applicability..." "of this twenty three year old black female" from the Miller since Miller does not hold that mandatory life imprisonment without parole is unconstitutional as long as it is applied to those over the age of 18.[22] *Cruz.* In *Cruz*, the United States District Court of Connecticut granted relief in the face of such ambiguity concerning Miller's adolescent child development for the eighteen year and five month old:

> "up until the age of 24, people exhibit greater risk-taking and reward-sensitive behavior when in the presence of their peers. See id. at 24-25. Adults after{2018 U.S. Dist. LEXIS 65} the age of 24 do not exhibit this behavior, but rather perform the same whether they are by themselves or with their peers. See id."

Considering this case, it is beyond a reasonable doubt petitioner was with her husband and others, and an altercation occurred upon the husband putting his hand on petitioner, petitioner reacted impulsively, irrationally, **cognitively psychomotor retarded**, etc., as a juvenile offender while with family and her abusive husband when the altercation occurred leading to the traumatic death of Avante'. Petitioner may have been over eighteen however, medical documentation determined she was cognitively under the age of a high school education of 18. Moreso, in *Cruz,* the court read Cruz's pro se filings liberally to raise the strongest arguments that they suggest. *Luis Noel Cruz, v. United States of America,* NO. 11-CV-787 (JCH), (3-29-18), 2018 US Dist LEXIS 52924; See *Willey v. Kirkpatrick*, 801 F.3d 51, 62 (2d Cir. 2015). the Court agreed language was ambiguous and Cruz at the age of eighteen was a juvenile. See also *Cruz v. United States* (Second Circuit Court of Appeals), No. 13-2457.[23] Petitioner proffers all evidence and tes-

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[22] Dr. Steinberg distinguished between two different decision-making processes: cold cognition, which occurs when an individual is calm and emotionally neutral, and hot cognition, which occurs when an individual is emotionally aroused, such as in anger or excitement. See id. at 9-10. Cold cognition relies mainly on basic thinking abilities while hot cognition also requires the individual to regulate and control his emotions. See id. at 10. While the abilities required for cold cognition are mature by around the age of 16, the emotional regulation required for hot cognition is not fully mature until the early- or mid- 20s. See id. at 10, 70; see also Cohen et al., *When Does a Juvenile Become an Adult?,* at 786 (finding that, "relative to adults over twenty-one, young adults show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal").

[23] In Cruz, the court read Cruz's pro se filings liberally to raise the strongest arguments that they suggest.

timony presented by experts in *Cruz* and *Adkins v. Wetzel*, No. 13-3652, 2014 U.S. Dist. LEXIS 115405, 2014 WL 4088482, at *3-*4 (E.D. Pa. Aug. 18, 2014). With this shift in national consensus, only recently did Louisiana legislatures reinstate the "old timers life sentence" for those who committed the offense of second degree murder between July 2, 1973 and prior to June 29, 1979 parole eligibility after serving forty years in R.S. 15:574.4 (H) since the Louisiana holds more lifers than larger states and incarcerated more inmates per capita. In light of the failure to individualize sentences per mandate in Miller, is blatant error and a violation of juvenile rights.The Constitution is clear:

> "If the Constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by the U.S. Supreme Court. States may not disregard a controlling, constitutional command in their own courts. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.){193 L. Ed. 2d 601}."

In the instant case, the mandate focuses on retroactivity because the petition was authorized prior to the Supreme Court's ruling in *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), and likely also because petitioner's memorandum likewise focused on the issue of an illegal sentence and retroactivity.

At the time of Miller, the assessment was based upon matters concerning the death penalty which drew the line at the age of eighteen. However, upon this honorable Court deciding Miller, legislatures automatically began drawing the line at under the age of eighteen. Petitioner contends that only this court can decide the merits of this case due the ambiguity in the case law,

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Luis Noel Cruz, Petitioner, v. United States of America, Respondent, NO. 11-CV-787 (JCH), (3-29-18), 2018 US Dist LEXIS 52924; See *Willey v. Kirkpatrick*, 801 F.3d 51, 62 (2d Cir. 2015). The evidence presented by Cruz here includes numerous articles and studies by Dr. Steinberg and others, as well as Dr. Steinberg's expert testimony before the court. Among other things, Dr. Steinberg testified that most of the research on adolescent brain development for late adolescents beyond age did not emerge until the end of the 2000s and early 2010s. See Steinberg Tr. at 14. Therefore, it is unlikely that one article from 2007 could capture the breadth or depth of scientific evidence on late adolescence presented before this court, which includes, inter alia, research published in 2016 and 2017. See Alexandra Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy,* 88 Temple L. Rev. 769 (2016) (introduced by *Cruz* at the evidentiary hearing before this court in Marked Exhibit and Witness List (Doc. No. 113)); Post-Hr'g Mem. in Supp., Ex. 1, Laurence Steinberg et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation, Developmental Science* 00 (2017) (Doc. No. 115-1)

statues, wording, and sentencing. Louisiana has rendered numerous decisions protecting the rights of persons over the age of eighteen concerning life in numbers addressing youth, except in cases where the offender was over the age of eighteen but within the age limit of 18-25. See *State v Tutson*, (3rd Cir., 3-7-19), 270 So. 3d 684; 2019 La App LEXIS 437.

Petitioner likes to present that the following states have determined that youth counts thus allowing the following ages: California 26, Missouri 21, Connecticut 18 years and five months, New York 18-21 family law sees as juvenile. As one academic onlooker put it:

> What difference is there really between 120 years and life besides semantics, because the reality is the same either way? All sentencing courts would have to do is stop issuing [life without parole sentences] and instead start sentencing those same juveniles to 100 years, and the problem is solved. Gone would be the idea that juveniles are different, less culpable, and more deserving of a meaningful opportunity for release. Gone would be the incentive to rehabilitate. Gone would be *Graham*. Leanne Palmer, *Juvenile Sentencing in the Wake of Graham v. Florida: A Look Into Uncharted Territory*, 17 Barry L. Rev. 133, 147 (2011). See also *People v. Rainer*, 2013 WL 1490107 at 12 (Colo. App. Apr. 11, 2013) ("Based on our consideration of the Supreme Court's Eighth Amendment jurisprudence, and federal and state rulings since Graham, we conclude that the term of years sentence imposed on Rainer, which does not offer the possibility of parole until after his life expectancy, deprives him of any 'meaningful opportunity to obtain [Pg 14] release' and thereby violates the Eighth Amendment."); *People v. Caballero*, 55 Cal. 4th 262, 145 Cal. Rptr. 3d 286, 282 P.3d 291, 293-95 (Cal. 2012) (*Miller* "made it clear that *Graham's* 'flat ban' on life without parole sentences applies to all nonhomicide cases involving juvenile offenders, including the term-of-years sentence that amounts to the functional equivalent of a life without parole sentence;" *Graham* does not "focus on the precise sentence meted out" but requires some realistic opportunity to obtain release).[24]

Petitioner notes that R.S. 14:30.1 sets a mandatory minimum and maximum sentence of life in prison without the benefit of probation, parole or suspension of sentence for all offender classes like that of a habitual offender and also uses C.Cr.P. Art 883 on a first offender without compliance with C.Cr.P. Art. 894.1 or mandates designed for a sentencing. For instance, petitioner was given a consecutive sentence without articulating the reasons for doing so in spite

[24] *State ex rel. Alden Morgan versus State of Louisiana*; (10-19-16); 217 So. 3d 266; 2016 La. LEXIS 2077

of mandatory language being evident concerning consecutive sentences.[25] With this being so, Louisiana has the highest number of offenders sentenced to life without benefits with sentencing enhancements over any other state. The fact that many jurisdictions do not expressly prohibit the sentencing practice at issue is not dispositive because it does not necessarily follow that the legislatures in those jurisdictions have deliberately concluded that such sentences would be appropriate. See *Thompson v. Oklahoma*, 487 U.S. 815, 826, n. 24, 850, 108 S. Ct. 2687, 101 L. Ed. 2d 702. Pp. ___ - ___, 176 L. Ed. 2d, at 837-841. On the other hand, the enhancement penalty of C.Cr.P. Art. 833 allows the Honorable Judge to order sentences to run consecutively or concurrently provided that the Honorable Judge articulates of the reasons or the sentence would be illegal and indeterminate. See C.Cr.P. Art. 879. The Honorable Judge articulated absolutely nothing and did not believe he had options of sentencing petitioner to less than the mandatory maximum and minimum and enhancement sentences in this case. In addition, counsel failed to present any of petitioner's history of being raped as a child and abused thereafter that prompted her mental health problems, suicide attempts, cuttings, mental hospitalizations at age nineteen concerning issues of the same just before succumbing to incarceration as a result of domestic abuse inflicted upon her and the young child by her husband which was cited in *State of Louisiana v Deidre Antoinette Pierre*, (3rd., 6-11-03), 854 So. 2d 945; 2003 La. App. LEXIS 1730. It's noted that the guidelines are advisory, not mandatory, however, this was before *Miller* and *Montgomery* mandates. Inherent in justice and the concept of fundamental fairness is ensuring a "balance of forces between the accused and his accuser." *Wardius v. Oregon*, 412 U.S. 470, 474, 93 S. Ct. 2208, 2212, 37 L. Ed. 2d 82 (1973).

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[25] *State v. Bethley*, 12-853, p. 11 (La.App. 3 Cir. 2/6/13), 107 So.3d 841, 850

The defendant has presented several facts regarding her family history or special circumstances that would support the Eighth, Fifth, Sixth and Fourteenth Amendment of the Federal and State Constitutions concerning the life sentence and consecutive nature of ten years. Moreover, immaturity, unlike age, is a subjective criterion, ill-suited to the pronouncement of categorical rules. See generally *Harmelin v. Michigan,* 501 U.S. at 1000 (Kennedy, J., concurring) (emphasizing that proportionality review "should be informed by objective factors to the maximum possible extent" (internal quotation marks omitted)). The Supreme Court recognized as much when, in "[d]rawing the line at 18 years of age" for death eligibility in *Roper v. Simmons,* it acknowledged that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." 543 U.S. at 574. Nevertheless, "a line must be drawn" to pronounce a categorical rule, and because "[t]he age of 18 is the point where society {2013 U.S. App. LEXIS 30} draws the line for many purposes between childhood and adulthood," the Court used that age to distinguish the class of offenders that categorically could not be sentenced to **death** from others to whom **no** such categorical prohibition would apply. Id. This is not to suggest that an adult defendant's immaturity is irrelevant to sentencing.[26] Petitioner notes in *U.S. v. Leonides Sierra,*

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[26] "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. *Miller*, 132 S. Ct. at 2471 (emphasis added). See *Black's Law Dictionary* 1242 (8th ed. 2004) (defining "process" as "[t]he proceedings in any action"); Webster's International Dictionary 1808 (3d ed. 1961) (defining "process" as "the course of procedure in a judicial action")."

Roper and Graham emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because "'[t]he heart of the retribution rationale'" relates to an offender's blameworthiness, "'the case for retribution is not as strong with a minor as with an adult.'" Graham, 560 U.S., at 71, 130 S. Ct., at 2028 (quoting *Tison v. Arizona*, 481 U.S. 137, 149, 107 S. Ct. 1676, 95 L. Ed. 2d 127 (1987); Roper, 543 U.S., at 571, 125 S. Ct. 1183). Nor can deterrence do the work in this context, because "'the same characteristics that render juveniles less culpable than adults'"-their immaturity, recklessness, and impetuosity-make them less likely to consider potential punishment. Graham, 560 U.S., at 72, 130 S. Ct., at 2028 (quoting Roper, 543 U.S., at 571, 125 S. Ct. 1183). Similarly, incapacitation could not support the life-without-parole sentence in Graham : Deciding that a "juvenile offender forever will be a danger to society" would require "mak[ing] a judgment that [he] is incorrigible"-but "'incorrigibility is inconsistent with youth.'" 560 U.S., at 72-73, 130 S. Ct., at 2029 (quoting *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky.App.1968)). And for the same reason, rehabilitation could not justify that sentence. Life without parole "forswears altogether the rehabilitative ideal." Graham, 560 U.S., at 74, 130 S. Ct., at 2030. It reflects "an

> "*Enmund v. Florida*, which held that the Eighth Amendment categorically forbids "imposition of the death penalty on one . . . who aids and abets a felony in the course of which a {933 F.3d 98} murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place." 458 U.S. 782, 797, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982).

With Dr. Warner deeming petitioner did not have specific intent to kill her husband or her son, a sentence of life is extremely cruel and excessive. Petitioner prays that this Honorable Court ends the chronological age touchstone used as illegal with respect to data present in support of invalidating juvenile life and death sentences when there is an abundance of ambiguity in the use of the words juvenile, youth and youthful offenders. "Youth is more than a chronological fact" Id. At 2467 (quoting *Eddings v Oklahoma*, 455 U.S. 104, 114, 102 S.Ct. 869, 71 L.Ed. 2d 1 (1982). The Supreme Court has acknowledged "that [[it's] precedents in this area have not been a model of clarity. *Lockyer v Andrade*, 538 U.S. 63, 72, 123 S.Ct. 1166, 155 L. Ed.2d 144 (2003), considering practices concerning Miller, C.Cr.P. Art. 833, C.Cr.P. Art 894.1, and presentence investigations. *Miller* court's main premise and mandate was that "**youth matters** for purposes of meting out the law's most serious punishments." id. at 2471.

> "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: *Juvenile Delinquency and Youth Crime* 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by **youths** may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." *Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime* 7 (1978)

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irrevocable judgment about [an offender's] value and place in society," at odds with a child's capacity for change. Ibid.

Graham concluded from this analysis that life-without-parole sentences, like capital punishment, may violate the Eighth Amendment when imposed on children. To be sure, Graham's flat ban on life without parole applied only to nonhomicide crimes, and the Court took care to distinguish those offenses from murder, based on both moral culpability and consequential harm. See id., at 69, 130 S. Ct., at 2027. But none of what it said about children-about their distinctive (and transitory) mental traits and environmental vulnerabilities-is crime-specific.

In the instant case, none of petitioner's history was presented to the Honorable Court, trial, or sentencing. Upon sentencing, the Honorable Judge offered no reasons for the said mandatory maximum and minimum sentence of life or enhancement. The determination of whether the claim was presented in such a fashion is made by looking to the briefs filed in state court. *Smith v. Digmon*, 434 U.S. 332, 98 S. Ct. 597, 54 L. Ed. 2d 582 (1978); *Soffar v. Dretke*, 368 F.3d 441, 467 (5th Cir. 2004). Accordingly, the Official Review Comment from the 1993 Code of Criminal Procedure it states vital that life sentences are illegal and need correcting because:

> (a) This article continues the 1942 determinate sentence rule, which had replaced the indeterminate sentence provision of the 1928 Code. The indeterminate sentence rule of Art. 529 of the 1928 Code. With minimum and maximum terms of imprisonment to be stated gave rise to confusion and inequities. Some trial judges did not understand the indeterminate sentence law and applied it incorrectly. Others did not like it and continued to impose fixed sentences. As a result. Many illegal sentences were imposed and many offenders were sentence and incarcerated without any possibility of parole. The determinate sentence provided by amended former Art. 529, coupled with the general right, under 1942 parole law (R.S. 15:574.4.3) to apply for parole after serving one-third of the sentence imposed, worked much more satisfactorily.

The Louisiana Supreme Court addressed indeterminate sentences by deeming the sanctions were null and void and reversing and remanding the case to the district court. *State v Dreaux*, No. 37235, (3-13-44), 205 La. 387; 17 So. 2d 559; 1944 La. LEXIS 677; *State v. Hart,* No: 80-KA-2398, (4-15-81), 397 So.2d 518, 1981 La. LEXIS 7729. Likewise, in this case, "By making youth (and **all** that accompanies it) irrelevant to imposition of that harshest prison sentence, [a mandatory] scheme poses too great a risk of disproportionate punishment." Id. at 2469.

With what we now admit in regards to treatment of juveniles and treatment of African Americans, it is incumbent upon this Honorable Court to address the ambiguities in the illegal sentences and enhancement in this unfortunate case and "s[he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the

gravity of the offense, and the circumstances of the case." *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So.2d 672, 676.

Since Counsel made an oral objection at the sentencing, the claim of excessiveness was preserved for appeal., however, the appellate court was only allowed to review the bare claim of excessiveness due to counsel failing to submit the records into evidence or at trial. *State of Louisiana v Deidre Antoinette Pierre*, (3rd., 6-11-03), 854 So. 2d 945; 2003 La. App. LEXIS 1730. Since then, claims of sentencing errors have been granted in post-conviction as a result of *Melinie* being overruled. *State v. Harris, (7-9-20), No:* 2018-KH-01012. Article I, Section 20 of the Louisiana Constitution of 1974 provides that "no law shall subject any person . . . to cruel, excessive or unusual punishment." The imposition of a sentence, although within the statutory limit, may still violate this provision and may be reviewed on appeal. *State v. Caston*, 477 So.2d 868 (La. App 4th Cir. 1985) but "It is the legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional." *Dorthey,* 623 So.2d at 1278. The United States Supreme Court has stated that "'[t]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime.'" *Ewing*, 538 U.S. at 23 (quoting *Harmelin*, 501 U.S. at 1001 (Kennedy J., concurring in part and concurring in judgment)).

For instance, this Court imported the Eighth Amendment requirement ``demanding individualized sentencing when imposing the death penalty" into the juvenile conviction context, holding that ``a **similar** rule should apply when a juvenile confronts a sentence of life (and death) in prison." *Miller,* 567 U. S., at 475, 477; 132 S. Ct. 2455, 183 L. Ed. 2d 407. [27] This individual-

[27] The ``correspondence" between capital punishment and life sentences, *Miller*, 567 U. S., at 475, 132 S. Ct. 2455, 183 L. Ed. 2d 407, might similarly require reconsideration of {2018 U.S. LEXIS 4} other sentencing practices in the life-without-parole context. As relevant here, the Eighth Amendment demands that capital sentencing schemes

ized sentencing assists to endure due process that the State and Federal Constitutions ensure. As reurged, the judge ordered a PSI however the report was not prepared or filed timely prompting the Honorable Judge Herman Clause to state that having one prepared would be futile due to the mandatory sentence. Such an investigation is an aid to the court and not a right of the accused, however, this was pre-*Miller/Montgomery*. Since lower courts deem presentencing investigations are futile when a sentence in "alphabets" is rendered and new evidence is learned daily on individual matters, it is incumbent upon this Honorable Court to correct the injustices with regards sentencing procedures in Louisiana.[28] A reasonable probability in this case definitely places petitioner well within the protections of *Miller* protections warranting less than life with an enhancement since nothing a concerning petitioner's history was before the courts and nothing is mentioned in regards to petitioner's abusive childhood although noting that petitioner's husband requested documents from the Department of Socials Services concerning petitioner being abused by her parents. By the lower courts choosing to ignore factors detailed, this Honorable Court must address them herein.

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ensure ``measured, consistent application and fairness to the accused," *Eddings v. Oklahoma*, 455 U. S. 104, 111, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982), with the purpose of avoiding ``the arbitrary or irrational imposition of the death penalty," *Parker v. Dugger*, 498 U. S. 308, 321, 111 S. Ct. 731, 112 L. Ed. 2d 812 (1991). To that aim, ``this Court has repeatedly emphasized that meaningful appellate review of death sentences promotes reliability and consistency." *Clemons v. Mississippi*, 494 U. S. 738, 749, 110 S. Ct. 1441, 108 L. Ed. 2d 725 (1990); see also *Parker*, 498 U. S., at 321, 111 S. Ct. 731, 112 L. Ed. 2d 812 (``We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally"); *Gregg v. Georgia*, 428 U. S. 153, 195, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976)(``the further safeguard of meaningful appellate review is available to ensure that death sentences are not imposed capriciously or in a freakish manner").

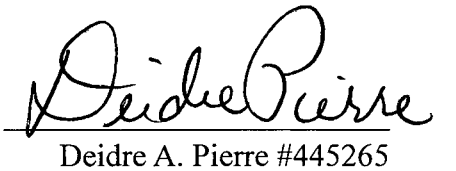
[28] Numerous other examples could be given of situations in which courts-faced with imprecise commands-must make difficult decisions. See, e.g., *Kyles v Whitley*, 514 US 419, 131 L Ed 2d 490, 115 S Ct 1555 (1995) (reviewing whether undisclosed evidence was material); *Arizona v Fulminante*, 499 US 279, 113 L Ed 2d 302, 111 S Ct 1246 (1991) (considering whether confession was coerced and, if so, whether admission of the coerced confession was harmless error); *Strickland v Washington*, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984) (addressing whether defense counsel's performance was deficient and whether any deficiency was prejudicial); *Darden v Wainwright*, 477 US 168, 91 L Ed 2d 144, 106 S Ct 2464 (1986) (assessing whether prosecutorial misconduct deprived defendant of a fair trial); *Christensen v Harris County*, 529 US 576, 589, 146 L Ed 2d 621, 120 S Ct 1655 (2000) (Scalia, J., concurring in part and concurring in judgment) (addressing whether an agency's construction of a statute was "'(reasonable'").

CONCLUSION

The petition for a writ of certiorari should be granted and that oral argument and appointment of counsel for a hearing to be had and evidence and testimony presented in this unique case to properly address merits of this case.

Thus said and done on February 26, 2021.

Respectfully submitted:



Deidre A. Pierre #445265

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEIDRE A. PIERRE #445265—PETITIONER

VS.

FREDERICK BOUTTÉ—RESPONDENT

PROOF OF SERVICE

I, Deidre A. Pierre #445265, do swear or declare that on this date, February 26, 2021 as required by Supreme Court Rule, I have served the enclosed Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid, or delivered to a third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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Clerk of Court
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District Court Judge
Michelle Braud
P.O. Box 2009
Lafayette, LA 70702

Court of Appeal, First Circuit
1600 North Third Street
Baton Rouge, LA 70821

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2021.

Signature

Deidre A. Pierre #445265