APPENDIX

App. 1 O'Neal v. Hughes 2023 U.S. App. LEXIS 2457 (Jan 31, 2023), *rehearing en banc denied by* 2023, U.S. App. LEXIS 6736 (Mar. 21, 2023)

App. 2 Calender Transfer

App. 3 O'Neal v. Commonwealth, 1998-SC-0642-MR-2000

App. 4 Commonwealth's response to RCr. 11.42 (10)(b)

App. 5 Kentucky Revised Statute § 635.020(4) (1996, ch 358 § 40, effective July 15, 1997)

No. 22-5745

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CEDRIC WINSTON O'NEAL,

Petitioner-Appellant,

v.

CRAIG HUGHES, Warden,

Respondent-Appellee.

ORDER

Before: READLER, Circuit Judge.

Cedric Winston O'Neal, a pro se Kentucky prisoner, appeals a district court judgment denying his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. O'Neal moves this court for a certificate of appealability (COA) and for leave to proceed in forma pauperis.

In 1997, O'Neal, then under 18 years old, was arrested and charged with murder and robbery. He was transferred from the juvenile court to the circuit court, where he was indicted by a grand jury. A jury found O'Neal guilty of murder and robbery, and he was sentenced to life in prison with the possibility of parole. The Supreme Court of Kentucky affirmed. *O'Neal v. Commonwealth*, No. 97-CR-2403 (Ky. June 8, 2000).

Just over three years later, O'Neal filed a motion for post-conviction relief under Kentucky Rule of Criminal Procedure 11.42, which the trial court denied. The Kentucky Court of Appeals affirmed. *O'Neal v. Commonwealth*, No. 2003-CA-001926-MR, 2006 WL 750274, at *1 (Ky. Ct. App. Mar. 24, 2006).

In 2009, the Kentucky Parole Board denied O'Neal's request for parole.

In January 2017, O'Neal filed another Rule 11.42 motion, arguing that he was entitled to relief in view of *Miller v. Alabama*, 567 U.S. 460, 465 (2012), which held that a mandatory sentence of life without parole for an individual under the age of eighteen violates the Eighth

Amendment's prohibition against cruel and unusual punishment, and *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016), which made *Miller* retroactively applicable to cases on collateral review. The trial court denied the motion, and the Kentucky Court of Appeals affirmed. *O'Neal v. Commonwealth*, No. 2019-CA-000447-MR, 2020 WL 1074673, at *1 (Ky. Ct. App. Mar. 6, 2020). The Kentucky Supreme Court denied leave to review on September 16, 2020.

In May 2021, at the earliest, O'Neal filed the present § 2254 petition by placing it in the prison mail. His petition reiterates and expounds upon his claim that he is entitled to relief in view of *Miller* and *Montgomery* and also claims that the circuit court "failed to acquire jurisdiction" when he was transferred there from the juvenile court, which "failed to certify him as a child by mandating his transfer to adult court"; that the trial court and prosecution erroneously placed the jury's factfinding duties in the hands of the parole board; and that he was wrongfully prosecuted under the felony-murder rule, which Kentucky has abolished.

O'Neal responded to the district court's order to show cause why his petition should not be dismissed as barred under the one-year statute of limitations set forth in 28 U.S.C. § 2244(d)(1). Finding no merit to O'Neal's arguments, a magistrate judge recommended that the petition be denied as untimely, and, over O'Neal's objections, the district court adopted the magistrate judge's recommendation, denied O'Neal's petition, and declined to issue a COA.

This court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court "denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," the petitioner can satisfy § 2253(c)(2) by establishing that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Antiterrorism and Effective Death Penalty Act of 1996 imposes a one-year statute of limitations for filing a federal habeas corpus petition that begins to run from, as is relevant here, the latest of:

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> . . . .
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). The 90-day period during which a petitioner may seek review of his conviction in the United States Supreme Court is included in the direct review process, such that the statute of limitations will not begin to run until that time has expired. *Lawrence v. Florida*, 549 U.S. 327, 333 (2007). The running of the statute of limitations is tolled when "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2).

Under 28 U.S.C. § 2244(d)(1)(A), the one-year statute of limitations began to run on September 7, 2000, the day after the last day on which O'Neal was permitted to file a petition for a writ of certiorari in the United States Supreme Court after the Kentucky Supreme Court affirmed his conviction and sentence. *See Lawrence*, 549 U.S. at 333. O'Neal filed his petition in 2021, over 20 years after the statute of limitations expired. Reasonable jurists therefore could not debate the district court's conclusion that O'Neal's petition was untimely under § 2244(d)(1)(A).

O'Neal maintains that he is entitled to a later commencement of his limitations period under § 2244(d)(1)(C) in view of *Miller*, which the Supreme Court decided on June 25, 2012, and *Montgomery*, which the Supreme Court decided on January 25, 2016. The district court concluded that the § 2244(d)(1)(C) statute of limitations started on the date that the Supreme Court decided *Miller*, not *Montgomery*. *See Dodd v. United States*, 545 U.S. 353, 358-60 (2005) (holding that when a prisoner's claim is based on a newly recognized right, the statute of limitations commences on the date that the Supreme Court initially recognized the right at issue and not when the Court makes that right retroactive to cases on collateral review); *see also Brooks v. Jordan*, No. 20-5075,

2020 WL 4073268, at *2 (6th Cir. June 8, 2020) (order) (applying *Dodd* to find that *Miller*'s original recognition of the right, and not when *Montgomery* made it retroactive was the proper time to look to for statute of limitations purposes). O'Neal filed his habeas corpus petition in May 2021, nearly nine years after the Supreme Court decided *Miller*. The filing of O'Neal's second Rule 11.42 motion in January 2017 did not toll the statute of limitations because that motion itself was filed outside the one-year period and the tolling provision of § 2244(d)(2) does not revive an expired limitations period. *See Hargrove v. Brigano*, 300 F.3d 717, 718 n.1 (6th Cir. 2002); *Wons v. Braman*, No. 20-2214, 2021 WL 2370681, at *2 (6th Cir. May 27, 2021) (order) (tolling "cannot revive a [limitations] period that has already run"). No reasonable jurist therefore could debate the district court's conclusion that O'Neal's habeas petition is time-barred.

O'Neal disagrees, though, and argues that one claim in particular—that the circuit court lacked jurisdiction to try him because he was neither properly transferred nor certified to be tried as an adult under Kentucky law—is not time-barred under § 2244(d)(1)(D) because the factual predicate for the claim arose on November 19, 2018, during the proceedings for his second Rule 11.42 motion, when the Commonwealth Attorney General purportedly "certified" in a brief that the circuit court had no jurisdiction.

O'Neal is incorrect. The factual predicate of O'Neal's claim—i.e., that the circuit court "failed to acquire jurisdiction" when he was transferred there from the juvenile court—arose in 1997, when he was transferred from the juvenile court to the circuit court. The fact that the Commonwealth Attorney General, in a brief dated December 17, 2018, discussed mandatory transfers to circuit courts, as an initial matter, does not suggest that the Commonwealth Attorney General "certified" that the circuit court had no jurisdiction, as O'Neal claims, and, moreover, does not amount to a new factual predicate so as to render O'Neal's circuit-court-jurisdiction claim timely. Indeed, O'Neal knew or should have known at the time of his transfer in 1997 that, according to him, the circuit court lacked jurisdiction to try him in view of the allegedly invalid transfer.

In addition, the claim is procedurally defaulted because it was never fairly presented to the Commonwealth courts. *See Pudelski v. Wilson*, 576 F.3d 595, 605 (6th Cir. 2009). To obtain relief under § 2254, a prisoner must first exhaust his state remedies by "giv[ing] the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *see* 28 U.S.C. § 2254(b)(1). When a petitioner has failed to exhaust his state remedies and can no longer do so under state law, as is the case here, *see McDaniel v. Commonwealth*, 495 S.W.3d 115, 121 (Ky. 2016); *Gross v. Commonwealth*, 648 SW. 2d 853, 857 (Ky. 1983), his habeas claim is procedurally defaulted. *See O'Sullivan*, 526 U.S. at 848. And although a procedural default may be excused if the petitioner shows cause and prejudice or a fundamental miscarriage of justice, which requires a colorable showing of actual innocence, *see Coleman v. Thompson*, 501 U.S. 722, 750 (1991); *Murray v. Carrier*, 477 U.S. 478, 496 (1986), O'Neal makes no such effort here. He therefore has failed to make a substantial showing of the denial of a constitutional right with respect to his untimely, procedurally defaulted circuit-court-jurisdiction claim.

Accordingly, the court **DENIES** the motion for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 22-5745

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CEDRIC WINSTON O'NEAL,

Petitioner-Appellant,

v.

CRAIG HUGHES, Warden,

Respondent-Appellee.

ORDER

Before: SILER, COLE, and DAVIS, Circuit Judges.

Cedric Winston O'Neal petitions for rehearing en banc of this court's order entered January 31, 2023, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

…nwealth of Kentucky
…f Justice

CALENDAR

Date 9/23/97
Time 1:00 #99

COURT | JUDGE

97J3211 In the interest of a child: Cedric O'Neal

…: 1) Murder, Robb

…rances: Child ✓ Parent: M Atty. for Child Kammenish

…r Parent: CA: Chauvin USPU

…ff.: PW'S

…Others

…g Court Dates: 10/27/97

…edings: PC Hrg
Hearing Held
P.C. found for both offenses - Transfer Circuit Court
$100,000.00 F/C

Judge's Signature

COPIES TO CHR, CDW, JCYC
SENT INTER-OFFICE

Date

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Supreme Court of Kentucky

1998-SC-0642-MR

CEDRIC W. O'NEAL — APPELLANT

V.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOHN WOODS POTTER, JUDGE
NO. 97-CR-2403

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Cedric W. O'Neal, was convicted by a Jefferson Circuit Court jury of first degree robbery and wanton murder. He was sentenced to twenty years and life imprisonment, respectively, and by law these terms merged into a single sentence of life imprisonment. He appeals to this Court as a matter of right. Ky. Const § 110(2)(b).

In the early morning hours of August 20, 1997, fifteen-year-old Quinton Hammond was shot and killed on his way to school as Appellant and Kevin Henderson tried to steal his tennis shoes. At a joint trial of the two men, Appellant testified that he and Henderson went out that morning to commit a robbery. Appellant further testified that he had no intention of actually committing robbery, but was only pretending to go

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along with the plan to placate Henderson. Despite a tape recorded statement in which Appellant confessed to the murder, at trial Appellant denied involvement and placed the blame on Henderson. The jury convicted both men of wanton murder and first degree robbery. More facts will be provided as necessary for development of the issues.

Appellant's sole claim of error is that the wanton murder instruction was defective because it allowed conviction under a theory of the case not supported by sufficient evidence. This dual-theory instruction allowed the jury to convict Appellant of wanton murder if (1) Appellant killed the victim, *or* (2) Appellant voluntarily participated or assisted in a robbery during which someone else killed the victim.[1] Appellant contends that there was insufficient evidence for a guilty verdict under the second alternative of accomplice liability. Since there was no indication that the jurors agreed as to which theory of the case applied, Appellant's argument concludes, the guilty verdict was reached in violation the unanimous verdict requirement.[2]

Appellant concedes that the evidence was sufficient to support a finding that he shot and killed the victim under the murder instruction's first theory of criminal liability. He also concedes that there was evidence indicating that he participated in the robbery, as required under the second theory, but argues that this participation could not have constituted wanton conduct as there was no evidence of the degree of his participation, i.e., of any agreement between the two men regarding whether resistance

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[1] Both options also required that the criminal acts be performed wantonly.

[2] KRS 29A.280(3); Davis v. Commonwealth, Ky., 967 S.W.2d 574, 582 (1998) ("Nothing less than a unanimous verdict is permitted in a criminal case. Unanimity becomes an issue when the jury is instructed that it can find the defendant guilty under either of two theories, since some jurors might find guilt under one theory, while others might find guilt under another. If the evidence would support conviction under both theories, the requirement of unanimity is satisfied").

from the victim would be met with force or deadly force. For all the evidence shows, Appellant contends, he merely could have stood by silently while Henderson accosted the victim, struggled with him, and shot him three times.

"Wantonness" occurs when a criminal act is committed under "circumstances manifesting extreme indifference to human life."[3] Furthermore, whether criminal conduct constitutes extreme indifference to human life is a matter to be decided by the trier of fact.[4] Evidence was presented that Appellant participated in an armed robbery. Although there was no evidence of an explicit verbal agreement between Appellant and Henderson to shoot the victim, such an agreement can be inferred from the fact that the two men carried a gun on their adventure, and this gun was passed back and forth between the men. The presence of the gun indicates that the use of deadly force was contemplated. Thus, there was evidence from which a jury could infer that Appellant acted wantonly.

Appellant further argues that the wanton murder instruction was defective because it did not distinguish between the shooter and the non-shooter, and thus it is impossible to determine from the record whether the jury unanimously settled on a verdict alternative supported by sufficient evidence. He also contends that this distinction between the shooter and non-shooter was necessary to mitigate his culpability to a lesser included offense.[5]

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[3] KRS 507.020; Brown v. Commonwealth, Ky., 975 S.W.2d 922, 923 (1998).

[4] Id. at 924.

[5] Second degree manslaughter or reckless homicide.

Appellant's argument fails, however, because Kentucky law does not require making a distinction between the shooter and non-shooter under the facts of this case, i.e., in a joint trial where the co-defendants were indicted on a theory of complicity liability. There was sufficient evidence for the jury to find Appellant guilty as either the shooter or non-shooter, and thus Appellant's claim must fail.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

Lambert, C.J., and Cooper, Graves, Johnstone, Keller, Stumbo, and Wintersheimer, JJ., concur.

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NO. 97CR2403

JEFFERSON CIRCUIT COURT
DIVISION FIVE (5)
JUDGE MARY SHAW

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS. COMMONWEALTH'S RESPONSE TO RCr 11.42 MOTION

CEDRIC W. O'NEAL — DEFENDANT

* * * * *

Comes the Commonwealth of Kentucky, by counsel, Jeanne Anderson, Assistant Commonwealth's Attorney for the 30th Judicial Circuit of Kentucky, and in response to O'Neal's motion pursuant to RCr 11.42, states as follows:

Initial Claim

O'Neal's motion is both untimely and successive.[1] He now claims, however, he is entitled to relief under RCr 11.42(10)(b), which allows the motion to be made outside the three year limitation period when a new constitutional right is made retroactive. He correctly states that *Miller v. Alabama*, 567 U.S. 460 (2012), announced a new constitutional rule holding that juveniles could not be mandatorily sentenced to life without the possibility of parole and that *Montgomery v. Alabama*, 136 S.Ct. 718 (2016), made that right retroactive. He claims his sentence is now void as being in violation of this new constitutional right.

The problem with O'Neal's argument is that the new constitutional rule in *Miller*, and made retroactive by *Montgomery*, does not apply to him. O'Neal simply did not receive a mandatory sentence of life without the possibility of parole. He did not even receive a sentence of life without the possibility of parole for twenty five years. He

[1] Movant states he previously filed an RCr 11.42 in 2003.

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simply received a life sentence and was eligible to see the parole board after only twelve years. Department of Corrections' records indicate he has already seen the parole board at least once, in 2009.

Miller's holding is limited to announcing a new constitutional right that precludes mandatory sentencing to life without the possibility of parole for juvenile offenders. In fact, *Montgomery* discusses at length what states are allowed to do to rectify any erroneous sentences:

> Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, *e.g.*, Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.
>
> Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.

Montgomery, 136 S. Ct. at 736. Not only is O'Neal *not* serving a mandatory sentence of life without the possibility of parole, but he has already *been given* the remedy suggested by the Supreme Court: an opportunity to show the parole board whether he has reformed.

Next, O'Neal's complaint that *Miller* made his mandatory transfer to circuit court pursuant to KRS 635.020(4) unconstitutional is wholly without merit. Again, *Miller*'s

holding is simply that a mandatory sentence to life without the possibility of parole is unconstitutional for juvenile offenders. A rule or, as here, a statute which merely directs how juvenile offenders will be tried is procedural, not substantive, and presents neither a question of constitutionality nor retroactivity.

> To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence. Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural requirement necessary to implement a substantive guarantee with a rule that "regulate[s] only the *manner of determining* the defendant's culpability."

Montgomery, 136 S. Ct. at 734–35 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) (citations omitted). KRS 635.020(4) only provided for the *manner* in which Kentucky determined O'Neal's culpability. Regardless of O'Neal's claims, *Miller* and *Montgomery* are inapplicable to his sentence or punishment.

Supplemental Pleadings

In November 2018, the original motion was supplemented. O'Neal's supplement to his RCr 11.42 motion, and the supplement filed by counsel, primarily argue that Kentucky has not properly addressed how the ***parole process*** should give juveniles a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[2] The Commonwealth is not arguing whether the parole process is being correctly administered (or not). However, whether the parole process is proper after the

[2] In his *pro se* supplement O'Neal makes several relatively confusing claims primarily relating to his statement to police. These are purely speculative and/or contradictory (his statement to police was suppressed at trial, but he implies the parole board used it to deny relief; he also states that the jury "apparently" heard the statement anyway). An RCr 11.42 motion must be pled with specificity, and these claims fail that requirement.

decisions in *Miller* and *Montgomery* has no bearing on the finality of O'Neal's sentence or on the untimeliness of his RCr 11.42. "Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, *nor does it disturb the finality of state convictions.*" *Montgomery,* 136 S. Ct. at 736 (emphasis added).

There are other methods available for O'Neal to challenge the parole process, and he should avail himself of those options. For example, he cites to *Hayden v. Keller*, 134 F. Supp. 3d 1000 (E.D.N.C. 2015) for the proposition that other jurisdictions have considered revising the parole process. The difference between this case and the *Hayden* case is that the defendant therein was not attacking his conviction. Hayden brought a 42 U.S.C. § 1983 action against the parole commission of North Carolina.[3] O'Neal seemingly has that option, too.[4] Furthermore, he could seek a declaratory judgment against the parole board. KRS 418.040 allows a party to obtain declaration of rights when an actual controversy exists. And KRS 418.045 grants a declaratory judgment action to "Any person . . . whose rights are affected by statute, municipal ordinance, or other government regulation . . .." O'Neal's complaint is about a

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[3] The other cases cited by the movant are also inapposite: in *State v. Young*, 794 S.E.2d 274 (2016), the juvenile *had been* sentenced to life without the possibility of parole and was resentenced. In *Diatchenko v. District Attorney for Suffolk Dist.*, 27 N.E.3d 349 (2015), the Massachusetts Parole Board was a party. *Hill v. Snyder*, 821 F.3d 763 (6th Cir. 2016), which vacated the *Hill v. Snyder* movant relies on, was taken against the Governor and the Michigan Parole Board. And *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), recognized as abrogated in *Franklin v. State*, 2018 WL 5839174 (Fla. Nov. 8, 2018—rehearing denied December 4, 2018), held that a juvenile's 1000-year sentences which allowed parole eligibility was constitutional.

[4] Apparently O'Neal attempted a 1983 action in the Eastern District of Kentucky. He filed suit *pro se*, but the Court dismissed it because the claims were too vague and speculative. (Civil case No. 3:17-cv-008-GFVT). It must be noted that the suit was dismissed *without prejudice*, so could be refiled, and O'Neal now has counsel from the DPA. That case was the only federal case challenging the parole process the Commonwealth found for O'Neal. However, O'Neal has filed something in Franklin Circuit against the Governor and the parole board, 17-CI-00101, but it is not clear whether it is a declaratory judgment action or some other type of suit. It also does not appear to have been resolved yet (per KYeCourts, visited December 12, 2018).

government regulation that he feels is affecting his rights. O'Neal got a fair trial, and his conviction must stand.[5]

Finally, O'Neal's argument that his sentence violates the Eighth Amendment and Section 17 of the Kentucky Constitution is without merit. Kentucky addresses its constitutional imperative to be free from cruel and unusual punishment the same way as the United States Supreme Court addresses the Eighth Amendment. *See Riley v. Commonwealth*, 120 S.W.3d 622, 633 (Ky. 2003). Therefore, the Supreme Court's decisions on the Eighth Amendment are binding on this Court. Again, *Miller*'s holding is limited to announcing a new constitutional rule precluding mandatory sentencing to life *without the possibility of parole* for juvenile offenders. O'Neal was not given that sentence. His sentence allows for parole, and, therefore, is not in violation of the United States or the Kentucky Constitutions.

Wherefore, the Commonwealth respectfully requests that O'Neal's RCr 11.42 motion be DENIED as untimely and without merit.

Respectfully submitted,

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[5] In the supplementary responses, O'Neal complains that his trial was unfair because it did not take his youth into account. Not only has this issue been decided through a direct appeal, but his jury instructions did tell the jury to consider his youth (KRS 532.025(8)). And if any aspects of the criminal justice process needs to be changed, those changes are for the legislature, not the judiciary.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was on the 17th day of December, 2018, mailed to Cedric O'Neal, Luther Luckett Correctional Complex, P.O. Box 6, LaGrange, Kentucky 40031, and to Renee VandenWallBake, 5 Mill Creek Park, Frankfort, Kentucky 40601.

Jeanne Anderson
Assistant Commonwealth's Attorney

APP. 5 APPENDIX ATTACHMENT

The version of Kentucky Revised Statute § 635.020 (***1996, ch 358 § 40, effective July 15, 1997***) provides.

> Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trail as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony and that the child was fourteen (14) years of age or older at the time of the alleged felony. If convicted in the Circuit Court he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, unless released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence. (*1996, ch 358 § 40, effective July 15, 1997*)

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