No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Jack R. Sliney,
Petitioner,
v.

State of Florida,
Respondent.

PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE

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CAPITAL CASE

QUESTIONS PRESENTED

Question One

Whether under the Eighth and Fourteenth Amendments to the Constitution, Florida may impose a death sentence upon an individual who was under the age of 21 when the crime was committed?

Question Two

Whether Florida violated Petitioner's Due Process Rights under the Fourteenth Amendment in summarily denying an evidentiary hearing on Petitioner's newly discovered claims?

CORPORATE NONDISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that he has no parent corporation and publicly held corporation holds 10% or more of stock.

LIST OF DIRECTLY RELATED PROCEEDINGS

Direct Review

Caption: *Sliney v. State of Florida*
Court: Florida Supreme Court
Docket: 83302
Decided: July 17, 1997
Published: 699 So.2d 662 (Fla. 1997)

Caption: *Sliney v. State of Florida*
Court: Florida Supreme Court
Docket: 2005-0013
Decided: November 9, 2006
Published: 944 So. 2d 270 (Fla. 2006)

State Collateral Review

Caption: *State of Florida v. Jack Sliney*
Court: Circuit Court for the Twentieth Judicial Circuit Court in and for Charlotte County, Florida (Initial Post-Conviction Motion)
Docket: 92-CF-451
Decided:
Published:

Caption: *State of Florida v. Jack Sliney*
Court: Circuit Court for the Twentieth Judicial Circuit in and for Charlotte County, Florida
Docket: 92-CF-451
Decided: April 11, 2017
Published: N/A

Caption: State of Florida v. Jack Sliney
Court: Circuit Court for the Twentieth Judicial Circuit, in and for Charlotte County, Florida
Docket: 92-CF-451
Decided: March 24, 2022
Published: N/A

Certiorari Review

Caption: *Jack Sliney v. Florida*
Court: Supreme Court of the United States
Docket: 97-7235
Decided: February 23, 1998
Published: 118 S. Ct. 1079 (*Cert. Denied)*

Caption: *Jack Sliney v. Florida*
Court: Supreme Court of the United States
Docket: 18-5042
Decided: October 1, 2018
Published: 139 S. Ct. 2005 (*Cert. Denied)*

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Congressman Anderson, in debating the new law, stated that he "firmly believe[s] that at the ages of 18, 19, and 20, young people are simply too inexperienced at both driving and

Statutes

Rules

Petitioner Jack R. Sliney, a prisoner on Florida's death row, petitions for a writ of certiorari to review the May 25, 2023 decision of the Supreme Court of Florida.

DECISION BELOW

The Florida Supreme Court's Decision is reported at 362 So. 3d 186, 2023 WL 3228813 (Fla. May 25, 2023). It is also reprinted in the Appendix (App) at 1a.

JURISDICTION

The opinion of the Florida Supreme Court was entered on May 25, 2023. A Motion for Rehearing was not filed. The Court has jurisdiction pursuant to 28 U.S.C § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall…deprive any person of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

A. Background

When Jack Sliney ("Jack") was only nineteen years old, he was indicted with one count of first-degree murder, one count of felony murder, and one count of robbery

with a deadly weapon. During trial phase, Jack was represented by Attorney Kevin Shirley ("Attorney Shirley"), who had been hired by his family. Following a poor and forced penalty phase presentation, the jury rendered an advisory opinion by a mere seven-to-five vote for death. In following the jury's minor majority advisory, the trial court sentenced him to death on February 14, 1994. Jack was only 21 years old.

Of note, after the guilt phase, Jack's counsel was discharged and The Office of the Public Defender was appointed about 30 days prior to penalty phase. Jack's newly appointed counsel moved to continue the penalty phase in order to adequately prepare and also requested that a mitigation specialist to be appointed. Both of these motions were denied and newly appointed counsel was forced into a penalty phase under an unreasonable time constraint. The short penalty phase presentation was over in a day. Despite this unconstitutional presentation, the jury recommended death by a single vote. Thereafter, the trial court held a hearing on December 10, 1993, when Jack's counsel asked the court to consider letters in support of Jack. They did not present any additional mitigation testimony. Jack made an oral statement to the court. Ultimately, the court sentenced Jack to death on February 14, 1994, Jack was 21 years old. Jack's co-defendant was given a life sentence.

On direct appeal, Jack's convictions and sentences were affirmed by the Florida Supreme Court in a four-to-three decision. *See Sliney v. State,* 699 So.2d 662 (Fla. 1997). Following this decision, Jack, *pro se*, filed a timely Motion to Vacate Judgements of Conviction and Sentence pursuant to Fla. R. Crim. P. 3.850 (hereinafter "3.850 motion") on February 16, 1999. Attorney Thomas Ostrander

("Attorney Ostrander") was appointed to represent, then 26 year old, Jack in post-conviction. Attorney Ostrander amended Jack's initial 3.850 motion and an evidentiary hearing on April 29, 2002. At this hearing, it was discovered that trial counsel Shirley had represented the lead detectives and/or their family members, which was unknown to Jack or his family. Thereafter, on June 19, 2003, Attorney Ostrander further amended his 3.850 Motion to include a claim alleging that there were undisclosed conflicts of interest with Attorney Shirley. Ultimately, the circuit court denied Jack's initial 3.850 motion on December 14, 2004 and the Florida Supreme Court affirmed that denial. *See Sliney v. State*, 944 So. 2d, 270 (Fla. 2006).

Jack, again *pro se,* timely filed a federal habeas petition in the United States District Court for the Middle District of Florida, *See Sliney v. Secretary, Florida Department of Corrections*, 2010 WL 3757373. Attorney Ostrander was again appointed to represent Jack in his federal habeas proceedings. Jack's petition was denied on September 24, 2010. He was denied a Certificate of Appealability ("COA"). Attorney Ostrander filed a Notice of Appeal and an untimely application for a COA to the Eleventh Circuit Court of Appeals; which was denied on December 21, 2010. Attorney Ostrander failed to seek reconsideration of the denial of the "COA." He also failed to file an application for a Petition for Writ of Certiorari with this Court.

Despite his appointment, Attorney Ostrander unilaterally ended his relationship with Jack in December of 2010, unreasonably asserting that there was nothing more to be done on the case. Jack attempted to contact Attorney Ostrander several times, to no avail. Jack was abandoned by Attorney Ostrander. After a period

of zero responses from Attorney Ostrander, Jack filed multiple motions to discharge Attorney Ostrander and requested the appointment of Capital Collateral Regional Counsel for the Middle Region ("CCRC-M"). At first, on May 23, 2014, the circuit court denied Jack's motion to discharge Attorney Ostrander. However, once the court became aware that Attorney Ostrander was suspended from the practice of law back on August 18, 2006, the circuit court reconsidered and granted Jack's motion to discharge counsel and appointed CCRC-M.

On January 14, 2022, counsel for CCRC-M, filed a Successive Motion to Vacate Judgement and Sentence Florida Rule of Criminal Procedure 3.851 ("3.851 motion"). Jack raised two claims arguing that under this Court's reasoning in *Roper*, the Eighth Amendment forbids the execution of an adolescent between the ages of 18 and 21. Jack sought evidentiary hearings on both claims to offer proof that he should be ineligible for the death penalty under the protections of the United States and Florida Constitutions, as established by this Court in *Roper*. The first claim argued that newly discovered evidence demonstrated that due to scientific advancements in brain development shows that offenders aged 18 to 21 have diminished capacity. Hence, Jack, who was 19 at the time of offense, had diminished capacity and his sentence of death is unconstitutional under the Eighth Amendment of the United States Constitution. The second claim argued that Jack's sentence of death is disproportionate and violated the Eighth Amendment's guarantee against a cruel and unusual punishment. This claim relied on newly discovered evidence that unequivocally demonstrates the national consensus and evolving standards of

decency demand that adolescent between the age of 18 and 21 be ineligible for the death penalty.

The circuit court summarily denied both claims, and inexplicably reclassified them as "purely legal arguments." On May 23, 2022, Jack timely filed his Notice of Appeal to the Florida Supreme Court. Finally, on May 25, 2023, the Florida Supreme Court denied Jack's successive 3.851 motion. *See Sliney v. State,* 362 So. 3d 186 (Fla. 2023). This Petition for Writ of Certiorari challenges the Florida Supreme Court's opinion affirming the sanctioning of the death penalty of adolescents between the ages of 18 and 21.

REASONS FOR GRANTING THE WRIT

I. Introduction

This writ should be granted for two reasons. First, Jack must be granted a meaningful opportunity to present his claims that he is not eligible for the death penalty under *Roper v. Simmons*, 543 U.S. 551 (2005). The Florida Supreme Court erred when it summarily denied Jack's claims. An evidentiary hearing is a constitutional, vital opportunity for a condemned individual to present evidence in support of a claim for the lower and reviewing courts. The denial of this sacrosanct due process right to Jack deprived the lower and reviewing courts of compelling newly discovered evidence demonstrating the science that relates to brain development of adolescents and where adolescence ends would be contrary to this Court's rulings in *Hall v. Florida* and *Moore v. Texas.*

Secondly, evolving standards of decency and this Court's precedent in *Roper* contend that Jack's falls outside the class of individuals that are eligible for the death penalty. This Court in *Roper* found unconstitutional to invoke the death penalty upon the youth due to their brain development. Jack's sentence is a violation of his Eight Amendment rights. Since *Roper*, there have been advancements in our understanding of brain development and there is now a scientific consensus[1] that adolescent offenders under the age of 21 have the same brain development and lack of reasoning as juvenile offenders, classified as ineligible for the death penalty under *Roper*.

II. THE FLORIDA SUPREME COURT ERRED IN DENYING MR. SLINEY AN EVIDENTIARY HEARING AND NOT GIVING HIM A MEANINGFUL OPPORTUNITY TO PRESENT EVIDENCE ON HIS CLAIMS.

On January 15, 2021, the American Association on Intellectual and Developmental Disabilities ("AAIDD") published the 12th edition of its manual; this updated manual formally defined the developmental period in adolescents as "before the individual attains age 22." [2] The AAIDD defined the developmental period as occurring before the age of 22 based on the following four approaches:

> (1)Etiological, which focuses on biomedical, social, behavioral, or educational risk factors that can occur prenatally, perinatally, or postnatally; (2) functional, which focuses on the trajectory of adaptive behavior and intellectual functioning; (3) cultural, which emphasizes social factors and social roles related to social and family interactions, educational involvement, career

[1] Schalock, R.L., Luckasson, R., Tassé, M.J. *Intellectual disability: Definition, diagnosis, classification, and systems of support.* American Association on Intellectual and Developmental Disabilities. (12th ed. 2001).
[2] *Id.*

> development, and assuming adult roles; and (4) administrative, which establishes the age of on set in reference to eligibility for services and supports.

This new definition of Developmental Period confirmed that there is a national scientific consensus as it relates to the period of adolescence and brain development. There was no such consensus at the time of Jack's trial. The national scientific consensus of the period of adolescence was confirmed on January 15, 2021, when the AAIIDD published the 12th edition of their manual. The Florida Courts should have heard this compelling evidence and erred when summarily denying Jack's claims without hearing such evidence during a comprehensive evidentiary hearing.

During Jack's trial, Jacquelyn Olander, Psy.D., performed a neuropsychological evaluation. Dr. Olander opined that Jack suffered from Attention-Deficit Disorder/Hyperactivity Disorder, Combined Type; Unspecified Neurodevelopmental Disorder; Persistent Depressive Disorder; and Unspecified Personality Disorder. Dr. Olander further opined that Jack's mental disorders and cognitive deficits had a significant impact on his decision making, in his ability to regulate his emotions, impulsivity, insight, executive skills, social/emotional function, and coping capabilities. She further concluded that at the age of nineteen-years-old, Jack "was experiencing cognitive and emotional immaturity." Jack's actions, as opined by Dr. Olander, were more in line with that of a 16 or 17 year old.

In Florida, an evidentiary hearing must be granted for newly discovered evidence claims if it is shown that the evidence was not known to the party, defense counsel, or the court at the time of trial, and it must appear that the defendant or counsel

could not have known of it by the use of due diligence. *Marek v. State,* 14 So. 3d 985, 990 (Fla. 2009). Since Jack was denied a hearing, he was prohibited from developing and presenting the newly discovered evidence for the record. The scientific consensus was established on January 15, 2021 that the period of brain development was extended to include 18 to 21 year olds. [3]

The science behind brain development and its effect on an adolescent has been undergoing research and peer review for years. It was not until January 15, 2021, when the 12th edition of the AAIDD manual acknowledged and published that such a scientific and medical consensus regarding brain development had been reached. Adolescent offenders, such as Jack, could not been able to develop such claims at a hearing, even now when there is a documented consensus that Mr. Sliney's brain was not fully developed at the time of the offense. Such reasoning is contradictory to this Court's precedent and Mr. Sliney should "have a fair opportunity to show that the Constitution prohibits their execution." *Hall v. Florida,* 134 S. Ct. 1986, 2001 (2014). The *Hall* Court was concerned with the "unacceptable risk" that a defendant lacking the requisite culpability might receive a death sentence. *Id* at 1990.

In summarily denying claims, trial courts have so far ignored the inevitability of the evolution of adolescent brain science. Yet, despite the overwhelming consensual evidence of progress in scientific knowledge regarding the brain development in adolescents and the casual connection to their cognitive capabilities and maturity,

[3] Schalock, R.L., Luckasson, R., Tassé, M.J. *Intellectual disability: Definition, diagnosis, classification, and systems of support.* American Association on Intellectual and Developmental Disabilities. (12th ed. 2001).

the courts have refused to allow development for the record and procedurally barred them. This is again true in Jack's case.

This Court has a well-established history of acknowledging advancements in science. In *Hall,* this Court ruled that Florida was blatantly disregarding the consensus in the medical community that a strict cut-off IQ of 70 was clinically incorrect.[4] In holding that this bright-line cut-off score was unconstitutional under the Eighth Amendment, this Court, relied heavily on the scientific community as follows:

> Florida's rule disregards established medical practice in two interrelated ways. It takes an IQ score as final and conclusive evidence of a defendant's intellectual capacity when experts in the field would consider other evidence. It also relies on a purportedly scientific measurement of the defendant's abilities, his IQ score, while refusing to recognize that the score is, on its own merits, imprecise.

Hall at 1995.

Then in *Moore*, the Court stated that determination of an intellectual disability, must be "informed by the medical community's diagnostic framework." [5]

This Court in *Hall* and *Moore* placed great emphasis and reliance on the medical/scientific community. In accordance with history, this Court should also rely on the scientific community in 19 year old offender Jack's case. While *Hall* and *Moore* are rooted in intellectual disability, this should not deter this Court from their

[4] *Id.*
[5] 137 S. Ct. 1039, 1049 (2017).

analysis based on science in this case. The principle of progression in science, whether it is about intellectual disability or juvenile brain development, must be afforded the same review and scrutiny. Without this Court's intervention, adolescents as young as 18 would be condemned to death by Florida and this country, when the well-established science strongly cautions us against such cruel and unusual punishment.

Jack is subject to execution without the benefit of presenting his compelling newly discovered evidence to the courts, which would have included the relevant testimony of medical professionals. As today's medicine has equivocally shown, Jack's brain development at 19 was no different, developmentally, of an offender who was under the age of 18. Thus, Jack would be constitutionally and categorically barred from being condemned to death for his actions as a 19 year old. Had Jack been given the opportunity to develop a record as it relates to his brain development, it would result in Jack receiving a life sentence.

III. MR. SLINEY'S SENTENCE IS A VIOLATION OF THE EIGHTH AMENDMENT UNDER *ROPER V. SIMMONS*.

The Court in *Roper*, stated that "[c]apital punishment must be limited to those offenders who commit '"a narrow category of the most serious crimes"' and whose extreme culpability makes them '"most deserving of execution."'[6] 19 year old Jack does not fall within these criteria. *Roper*, in accordance with the Eighth Amendment

[6] *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (quoting *Atkins,* 536 U.S. 319 (2002)

of United States Constitution's ban against "cruel and unusual" punishment, created a categorical exemption from the death penalty for offenders who were under the age of eighteen at the time the offense. This Court acknowledged that "[w]hile the State has the power to punish, the [Eighth] Amendment stands to assure that this power be exercises within the limits of civilized standards."[7] Additionally, this Court has long held that "punishment for crime should be graduated and proportioned to the offense."[8] This Court in *Roper* carried the constitutional requirements of *Atkins* in banning juveniles from being condemned to death.[9]

This Court determines that a class of citizens is ineligible for the death penalty if: 1) this Court finds that the "national evolving standards of decency regarded the practice of executing juvenile offenders as a form of cruel and unusual punishment proscribed by the Eighth Amendment;"[10] and 2) it independently determines that the punishment is disproportionate to the level of culpability exhibited by members of the class.[11] Courts additionally look into the "actual sentencing practices" of the states[12].

This Court in *Roper*, held that individuals under the age of 18 are less culpable than their adult counterparts and relied on several factors. The first factor that this Court pointed to was the confirmation by the scientific community that there is "a lack of maturity and an underdeveloped sense of responsibility" is prevalent in

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[7] *Trop v. Dulles,* 356 U.S. 86, 100 (1958)
[8] *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544 (1910)
[9] *Atkins v. Virginia*, 536 U.S. 304 (2002)
[10] Nicole M. Austin, *Roper's Unfinished Business: A New Approach to Young Offender Death Penalty Eligibility*, 69 BFLR 1195, 1996 (2021).
[11] Roper at 568.
[12] *Graham v. Florida,* 560 U.S. 48, 62 (2010)

juveniles in comparison to adults.[13] This Court further noted that the "lack of maturity" often led to "ill-considered actions and decisions."[14] The second factor that this Court noted was that "juveniles are more vulnerable or susceptible to negative influences and outside pressures" and generally have "less control, or less experience with control, over their own environment." [15] The final factor this Court considered was the difference between the character of juveniles versus that of adults. This Court recognized that "the character of a juvenile is not as well formed as that of an adult and that the personality traits of juveniles are… less fixed."[16] This Court relied heavily on the scientific community's consensus at the time to come to its opinions about the marked difference between juveniles and adults.[17] The seeking of death for juvenile offenders failed to pass constitutional muster because it woefully failed to promote the principles of capital punishment: retribution and deterrence. *See Gregg v. Georgia,* 428 U.S. 153, 183 (1976). If both of these principles cannot be accomplished, the sentencing scheme must fail. *See Kennedy v. Louisiana,* 554 U.S. 407, 441 (2008).

Moreover, this Court in *Roper* placed a strong emphasis on the consensus in the scientific community that offenders under the age of eighteen were more susceptible to pressures and less culpable, therefore imposing a death sentence upon those

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[13] *Roper,* 543 U.S. 551 at 569 (2005)
[14] *Id.*
[15] *Id.*
[16] *Id at 570.*
[17] The Court cited to Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339 (1992); Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003); E. Erikson, Identity: Youth and Crisis (1968).

offenders was a violation of the Eight Amendment's prohibition against "cruel and unusual" punishment[18]. Science does not exist in a vacuum, and it is not stagnant. Now, based scientific research and evidence, scientific consensus that adolescents between the ages of 18 and 22 are, developmentally, no different from juveniles under the age of 18. These adolescents should also be categorically exempt from the death penalty like the juveniles.

The scientific community uncontroverted findings regarding adolescent's brain development was published by the AAIDD in its updated manual on January 14, 2021. The update clearly stated for the first time that the human brain is not developed until the age of 22. Specifically the manual stated that adolescents, such as Jack who was 19 at the time of the offense, are found to exhibit the exact deficiencies that were identified in *Roper*. Thus, like their juveniles counterparts, adolescents should also be categorically exempt from the death penalty due to their diminished culpability.

In a majority of states there is a complete ban on the death penalty, either by way of the state legislature or a Governor-imposed ban. It therefore follows that in a majority of states, adolescents are not being executed. [19] Notably, a Circuit Court in Kentucky held the death penalty was disproportionate punishment for offenders

[18] Id at 569-70.

[19] Alaska, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin have all abolished the death penalty; https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited August 11, 2023)

under the age of twenty-one [20]. The Kentucky court relied heavily on scientific research and evidence, as did this Court in *Roper,* in coming to its conclusion. [21]

Additionally, there is a worldwide trend to treat young adults similarly to juveniles under the age of eighteen. The United Nations has published guidance and standards requiring that "[e]fforts shall…be made to extend to principles embodied in the Rules to young adult offenders." Under the United Nations, not only are juveniles given broader protections in the legal system, due to their age, so are adolescents, like Jack. [22]

There is a national and global consensus, regarding the science behind brain development and the non-imposition of death penalty on 18 to 22 year-olds, that individuals who were 18 to 22, should be categorically exempt from the death penalty. It is clear that the science behind brain development has evolved since the time of Jack's trial and is a basis for newly discovered evidence. The science is now more sophisticated and provides a comprehensive understanding of the deeper functioning of the brain and of brain development when it comes to decision-making and the role of the frontal lobe. "[H]ome to key components of the neural circuitry underlying "executive functions" such as planning, working memory, and impulse control, are among the last areas of the brain to mature…[23]" The lack of impulse control was

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[20] *Commonwealth v. Bredhold,* No. 14-CR-161, 2017 WL 8792559 (Fayette Cir., Ky. Aug 1, 2017)
[21] *Id.*
[22] "A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult." United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 2.2(a); available at http://www.ohchr.org/Documents/ ProfessionalInterest/beijingrules.pdf.
[23] Sara Johnson, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy,* 45 J. Adolesc. Health 216, 216 (2009).

recognized in *Roper* as a reason that juvenile offenders are less culpable than adults. Therefore, this Court should implement that same reasoning for adolescents, like Jack.

The *Roper* Court, while acknowledging that what differentiated juveniles from adults does not disappear when a person turns eighteen years of age, they nevertheless drew a line as when eighteen is considered adulthood as "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest[24]." However, this sentiment is ripe with inconsistencies in the law regarding the treatment of young adults and their eligibility to participate in activities due to their youth.

> [Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier yearsm generally are less mature and responsible than adults. Particularly "during formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment "expected of adults.

Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982)

While *Roper* ruled that adolescence, by societal standards, has an upper limit of the age of eighteen and therefore those who are eighteen are adults, full stop. However, there are many inconsistencies in the law with regards to this statement.

[24] Id at 574.

In what is likely the most known disparity is the legal drinking age. 23 USC § 158, which codified The National Minimum Drinking Age Act, withholds funds from states that do not impose a minimum age to purchase or possess alcohol to the age of twenty-one. This came after a belief from Congress that individuals under twenty-one irresponsible and therefore responsible for traffic-fatalities[25]. Court have taken up the same line of thinking and have opined that "[a] minor be reason of his or her immaturity is not "ablebodied" to be able to drink or to make informed judgements in this regard."[26] Other examples of this disparate treatment in young adults include the Foster Care Act of 2008, where states are permitted to define a "child" to include the age of twenty-one and have extended their foster care services from the age of eighteen to the age of twenty-one in part due to a lack of readiness in eighteen year olds[27]. More recently the Federal Food, Drug, and Cosmetic Act was amended; raising the federal minimum age for the sale of tobacco products from eighteen to twenty-one.[28] While the Roper Court may have drawn that line in the sand where society considers eighteen to be an adult, there lies an inherent contradiction in that reasoning within our Nation's laws.

It is most notable that the basic reasoning in raising age restrictions regarding what individuals can and cannot do based on age, relies on "immaturity" within that

[25] Congressman Anderson, in debating the new law, stated that he "firmly believe[s] that at the ages of 18, 19, and 20, young people are simply too inexperienced at both driving and drinking to be permitted to do both." House of Representative Congressional Record June 27, 1984 p 19149
[26] Montgomery v. Orr, 498 N.Y.S. 2d 807, 812 (N.Y. Sup. Ct. 1986)
[27] Public Law 110-351
[28] https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21 (Accessed August 11, 2023)

age range. Yet while a nineteen-year-old defendant do not have the capacity to be able drink safely as opposed to their twenty-five year old counter-part, they have the same culpability as similarly situated twenty-five old defendant in a criminal setting.

Also, the American Bar Association ("ABA") has expressed their support for extending the protections of *Roper* to individuals and has recognized the diminished culpability of juvenile and young adult offenders. In 2018, the ABA passed a resolution and urged that "each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21 years or younger at the time of the offense." [29]

The evolving standards of decency dictate that a 19 year old Jack should be categorically exempted from a death sentence. To uphold his death sentence would mean that courts have disregarded the tenets of medicine and science; have disregarded how legislatures have recognized age-based deficiencies when enacting specific age-restriction laws; and have disregarded the numerous professional organizations that have unequivocally stated that the development of the brain of a young adult or adolescent's is the same to that of a juvenile.

[29] ABA House of Delegates Resolution 111, (adopted Feb. 2018), available at https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2018_my_111.pdf.

CONCLUSION

The Court should grant a Writ of Certiorari or any relief that it deems appropriate.

Respectfully Submitted,

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Dated September 19, 2023