No. 23-5630

In The
Supreme Court of the United States

JACK R. SLINEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREMEME COURT OF FLORIDA

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Capital Case

QUESTIONS PRESENTED

1. Whether this Court should grant review to expand Roper v. Simmons to include a categorical bar to execution for defendants under the age of twenty-one at the time of the murder when the claim was raised and rejected in a successive post-conviction motion that was found untimely, and the underlying decision presents no matter of unsettled constitutional law.

2. Whether Florida violated Petitioner's Due Process Rights under the Fourteenth Amendment in failing to conduct an evidentiary hearing on Petitioner's newly discovered evidence claim where the lower courts found the claim untimely, procedurally barred and without merit as a matter of established law?

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CITATION TO OPINION BELOW

The opinions of the Florida Supreme Court decisions are cited as Sliney v. Florida, 118 S. Ct. 1079 (1998) and Sliney v. Florida, 139 S. Ct. 205 (2018).

STATEMENT OF JURISDICTION

Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257(a). Respondent agrees that that statutory provision sets out the scope of this Court's certiorari jurisdiction but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Respondent accepts the Petitioner's recitation of the constitutional provisions implicated in this case.

STATEMENT OF THE CASE AND FACTS

Procedural Posture

This Petition comes to this Court following the denial of Sliney's third motion for post-conviction relief which was affirmed on appeal by the Florida Supreme Court on May 25, 2023. Sliney's conviction and sentence have withstood meritless challenges on direct appeal, state collateral review, and federal habeas review. Sliney now asks this Court to accept review of his case and expand Roper v. Simmons, 543 U.S. 551 (2005) to include those up to the age of twenty-one.

Facts and Procedural History

The Charlotte County Grand Jury indicted Appellant, Jack Rilea Sliney, and co-defendant, Keith Wittemen, Jr., on September 3, 1992, each for one count of first-degree premeditated murder, one count of first-degree felony murder and one count of robbery with a deadly weapon. (R1/4-5). The cause proceeded to jury trial on September 27, 1993, and Sliney was found guilty as charged.

The victim in this case, George Blumberg, and his wife, Marilyn Blumberg, owned and operated a pawn shop. On June 18, 1992, Marilyn drove to the pawn shop and found her husband lying face down, dead, with scissors protruding from his neck. The shop had been ransacked. Mr. Blumberg had been beaten and stabbed. He suffered fractured ribs and a broken back bone. He also had contusions on his head consistent with having been inflicted by a claw hammer and had been stabbed repeatedly in the neck. The medical examiner opined that the broken ribs and backbone were the last injuries the victim sustained and that the cause of these

injuries was most likely pressure applied to the victim's back as he lay on the ground.

Following a tip to law enforcement, Sliney confessed to committing the murder and robbery with his 17 year old co-defendant, Keith Witteman. Sliney recalled that he used a hammer and scissors to inflict the injuries to Blumberg. Sliney was also linked to the crime through a tape recording of him attempting to sell stolen guns from the pawnshop to a teenage acquaintance.[1] Sliney v. State, 699 So. 2d 662, 664-66 (Fla. 1997).

During the penalty phase defense counsel presented the testimony of several family members, teachers, and friends of Sliney. (R12; R13). At Sliney's sentencing, the trial judge followed the jury's seven to five death recommendation and imposed an upward departure sentence of life on the robbery count. (R2/221-228; 235-240; R3/462-480).

As aggravation in Sliney's case, the trial court found that: 1) the murder was committed while Sliney was engaged in or was an accomplice in the commission of a robbery; and 2) the murder was committed for the purpose of avoiding or preventing a lawful arrest. In mitigation, the trial court found the statutory factors of: 1) no significant prior criminal history (substantial weight); 2) youthful age (little weight). As to non-statutory mitigators, the trial court found: 1) good prisoner (some weight); 2) politeness (little weight); 3) good neighbor (little weight); 4) caring

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[1] At trial, Marilyn Blumberg identified the guns Sliney sold to Capeles and confirmed that they were present in the pawn shop the day prior to the murder.

person (little weight); 5) good school record (little weight); and 6) gainful employment (little weight). (R2/221-227; R3/462-480).

Further, the trial court rejected Sliney's request to consider his confession as a mitigating factor because Sliney had claimed that the confession was involuntary. And, finally, the trial court found that co-defendant Wittemen's life sentence for the same offenses was not a mitigating factor in Sliney's case because the two defendants were not equally culpable. (R2/221-227).

The Florida Supreme Court affirmed Sliney's convictions and sentences on direct appeal. Sliney v. State, 699 So. 2d 662 (Fla. 1997). The judgment and sentence became final upon denial of certiorari by the United States Supreme Court on February 23, 1998. Sliney v. Florida, 522 U.S. 1129 (1998); Fla. R. Crim. P. 3.851(d)(1)(B) (A judgment and sentence become final "on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed").

Since his conviction and sentence became final on direct appeal, Sliney unsuccessfully sought relief from his convictions and sentences in state court filing two motions for post-conviction relief. Following a state court evidentiary hearing, Sliney's first motion for post-conviction relief was denied by the trial judge. The denial of relief was affirmed on appeal by the Florida Supreme Court. Sliney v. State, 944 So. 2d 270 (Fla. 2006).

Sliney unsuccessfully sought federal habeas relief. Sliney v. Sec'y, Dep't of Corr., 2010 WL 3768373 (M.D. Fla. Sept. 24, 2010). The Eleventh Circuit Court of

Appeals denied Sliney's Application for a Certificate of Appealability on December 21, 2010. Sliney v. Sec'y, Dep't of Corr., No. 10-14965-P (11th Cir. Dec. 21, 2010).

After this Court issued its opinion in Hurst v. Florida[2], Sliney filed a successive motion for post-conviction relief seeking to vacate his death sentence. The circuit court denied his motion and the Florida Supreme Court affirmed on appeal. Sliney v. State, 235 So. 3d 310 (Fla. 2018).

On June 7, 2023, Sliney filed a motion for Rule 60 (b) relief in the middle district of Florida, seeking to reopen his federal habeas proceeding. The State filed a motion to dismiss on July 14, 2023. That motion remains pending in the middle district of Florida.

Post-conviction proceedings related to the Pending Certiorari Petition

Petitioner's statement of facts includes irrelevant and unrelated 'facts' attacking trial and post-conviction counsels' competence. He also includes reference to what he considers trial counsel's conflict of interest at the time he was retained by Sliney to represent him. The State will not provide a detailed response to these allegations as they are completely unrelated to the present petition except to note that such claims were addressed in state and federal court and found to be without merit.[3]

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[2] Hurst v. Florida, 136 S. Ct. 616 (2016).

[3] See Sliney v. State, 944 So. 2d 270, 280-281 (Fla. 2006) ("Sliney has failed to show how Shirley's prior representation of Detective Sisk adversely affected his representation of Sliney."); Sliney v. Sec'y, Dep't of Corrections, 2010 WL 3768373 (M.D. Fla. Sept. 24, 2010) (affirming the denial of habeas relief, concluding that even assuming an actual conflict, Sliney failed to show an "adverse effect" upon

Petitioner's assertion that Sliney had unprepared and ineffective counsel during his penalty phase is not only irrelevant, it is inaccurate. (Petition at 2). Mark Cooper, who represented Sliney during the penalty phase, was the Assistant Deputy Public Defender in Charlotte County. (C7, 1143). The experienced public defender who represented Sliney consulted with three doctors in this case, Dr. Spellman, Dr. Kling, and Dr. Silver. (C7, 1156).[4] As to Dr. Kling, Cooper testified that he did not want a written report, just an oral report. (C7, 1156). His notes of the report from Dr. Kling states: "...MMPI, story changes, secretive amoral. He maintains a public appearance of being moral, explosive person, over-controlled, no alcohol, no steroids, a friend did the crime, angry person wants to look normal, amoral, no internal moral constraints, now remembers all, no excuse, like a bungee type inside, no morals, does what he wants, wheeler, dealer is in denial, does not understand, model prisoner, performs to what is expected without committing appearance, very intuitive, practical, did not learn much in school, a classic con man, no goals, accumulates stuff." (C7, 1156-57). As a result of this report, Cooper did not want to use Dr. Kling for mitigation. Nor, did he want a written report "anywhere in circulation." (C7, 1157). Ultimately, none of the experts proved sufficiently beneficial for trial counsel to call during Sliney's penalty phase. Sliney's ineffective assistance claim related to counsel's effectiveness was rejected by the Florida Supreme Court. See Sliney v. State, 944 So. 2d 270, 283 (Fla. 2006) ("The record in

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Shirley's representation of him.) (Doc. 25 at 57).

[4] Referencing the initial post-conviction record in case no. SC05-13.

this case shows that the experts drew conclusions that would have been unfavorable for Sliney's presentation of mitigation.").

Sliney filed his second successive motion that is the subject of this Petition on January 14, 2022. Sliney claimed that the Eighth Amendment bars his execution because he was nineteen at the time of the murder and cited newly discovered evidence in the form of the AAIDD Manual[5] in support. Following the State's response and a case management hearing, the trial court denied the motion without a hearing on March 24, 2022. (SPR 132-139). The court found this claim untimely, procedurally barred, and meritless.

On appeal, the Florida Supreme Court affirmed, holding that to sustain the lower court's ruling "we need only explain our agreement with the court's conclusion that Sliney's claims are untimely." Sliney v. State, 362 So. 3d 186, 188–89 (Fla. 2023). The court noted that the general rule is that a motion seeking relief "under rule 3.851 must be filed 'within 1 year after the judgment and sentence become final.'" Id., (quoting Fla. R. Crim. P. 3.851(d)(1)). An exception applies when "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence." Fla. R. Crim. P. 3.851(d)(2)(A). A motion traveling under this provision must be filed within one year of the date such facts become discoverable through due diligence. Jimenez v. State, 997 So. 2d 1056, 1064 (Fla. 2008).

Reference to an updated manual, did not render Sliney's claim timely. The

court explained:

> Sliney's attempted reliance on the publication of the new AAIDD manual ignores the important distinction between the facts on which his claims are predicated and the evidence used to prove those facts. *See generally Flanagan v. Johnson*, 154 F.3d 196, 199 (5th Cir. 1998) (explaining the difference). The updated AAIDD manual might provide additional support for Sliney's claims, but the scientific facts underlying those claims have been available since well before 2021. If we were to accept Sliney's timeliness argument, every new study or publication related to brain development in young adults could be invoked to restart the clock for filing a successive rule 3.851 motion. That would be at odds with the finality interests served by the rule.

Sliney v. State, 362 So. 3d 186, 189 (Fla. 2023).

Sliney now seeks a writ of certiorari from this Court.

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[5] American Association on Intellectual and Developmental Disabilities.

REASON FOR DENYING THE WRIT

I., II.[6] This Court should not grant review to expand Roper v. Simmons to include a categorical bar to execution for defendants under the age of twenty-one when the claim was raised and rejected in a successive post-conviction motion that was found untimely, and the underlying decision presents no matter of unsettled constitutional law. The failure to hold an evidentiary hearing on Petitioner's untimely Roper claim does not implicate a conflict with this Court's jurisprudence or a conflict among state and federal courts.

Petitioner asks this Court to review his long final case to articulate a new categorial bar to execution for defendants under the age of twenty-one at the time they chose to commit capital murder. However, this claim was rejected below on non-constitutional grounds. Since the decision below rests upon independent and adequate grounds, this Court lacks jurisdiction to hear the claim. Thus, this long final post-conviction case is a very poor vehicle to reach the question presented. Moreover, even without the procedural bar there is no compelling reason to accept review. At nineteen, Sliney was past the settled age of majority and the bright line set by this Court in Roper v. Simmons, 543 U.S. 551 (2005). There is no conflict with this Court's precedent, or any significant unsettled question of law presented for review.[7] Accordingly, certiorari should be denied.

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[6] Petitioner frames the question as two separate issues. However, the failure to hold an evidentiary hearing and the expansion of Roper are so intertwined it makes sense to address both under one heading.

[7] Respondent points out that this Court has declined to accept review in several Florida cases of capital defendants seeking to extend Roper. See Barwick v. State, 361 So. 3d 785, 788 (Fla. 2023), cert. denied sub nom. Barwick v. Florida, 143 S. Ct. 2452 (2023); Deviney v. State, 322 So. 3d 563, 566 (Fla. 2021), cert. denied sub nom.

The claim was time barred under well-established Florida law.

In Florida, a motion seeking post-conviction relief "under rule 3.851 must be filed 'within 1 year after the judgment and sentence become final.'" Fla. R. Crim. P. 3.851(d)(1)).[8] The Florida Supreme Court explicitly affirmed application of the time bar, holding that to sustain the lower court's ruling "we need only explain our agreement with the court's conclusion that Sliney's claims are untimely."[9] Sliney v. State, 362 So. 3d 186, 188–89 (Fla. 2023). The newly discovered evidence exception to that rule did not apply to Sliney's claim. The court explained that Sliney's reliance upon a change in a professional manual, one that addresses Intellectual Disability, did not render his exemption from execution claim timely. The claim was available to Sliney much earlier than 2022 if pursued with diligence. Indeed, there are reported cases in Florida citing similar studies/research arguing for an extension of Roper more than a decade earlier. See Morton v. State, 995 So. 2d 233, 245–46 (Fla. 2008) ("Although this 2004 brain mapping study had not yet been

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Deviney v. Florida, 142 S. Ct. 908 (2022); Branch v. State, 236 So. 3d 981, 984 (Fla. 2018), cert. denied, Branch v. Florida, 138 S. Ct. 1164 (2018).

[8] Florida requires all motions for postconviction relief to be filed within a year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(l). Any motion filed after that point must be dismissed unless the motion alleges:

(A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or

(B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(l) and has been held to apply retroactively, or

(C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2)(A)-(C).

published at the time of Morton's trials, Morton or his counsel could have discovered similar research at that time that stated that the human brain was not fully developed until early adulthood.") Sliney's Petition repeatedly cites sources dating far earlier than the 2021 manual upon which he relies in an attempt to overcome the time bar ---reinforcing the conclusion that this claim was not raised within one year of the date it could have been raised, as required by Florida law. See Petition at 14, footnotes 20; and 23 (citing a case from 2017 and a study from 2009).

Sliney asserted that he could not have pursued his claim earlier because the information did not exist until the AAIDD released its report extending the age of onset for Intellectual Disability from eighteen to twenty-two years old. However, that report, addressing the diagnosis of Intellectual Disability, has no application to this case where Sliney has an average IQ and is not asserting intellectual disability bars his death sentence. Moreover, the brain studies allegedly underlying this change in the AAIDD Manual are not new and do not qualify as newly discovered evidence.[10] To the contrary, studies, reports and **cases** discussing maturity, age and extension of Roper v. Simmons, 543 U.S. 551 (2005) have been in the public domain

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[9] Sliney also claimed that he was entitled to a renewed evaluation of the proportionality of his death sentence. This claim too, was time barred. That part of the decision below is not challenged by Sliney in his Petition.

[10] The Florida Supreme Court's holding on diligence is consistent with earlier cases. See Melton v. State, 367 So. 3d 1175, 1176–77 (Fla. 2023) ("The declaration and resolution that Melton argues are newly discovered evidence largely rely on pre-2021 studies and, in fact, the declaration recognizes that in 2015 the majority of the neuroscientific community accepted that the human brain was not fully developed until late adolescence.").

years prior to the 2021 AAIDD Manual upon which Sliney relies.[11]

The Florida Supreme Court observed its ruling on the timeliness bar "does not break new ground." The court explained:

> Other young adult offenders have relied on arguments like Sliney's as a gateway to escaping the time bar in rule 3.851 and arguing for an extension of *Roper*. In their cases, we similarly refused to treat materials like the 2021 AAIDD manual as "newly discovered evidence" in this context. *See, e.g.*, *Deviney v. State*, 322 So. 3d 563, 573 (Fla. 2021); *Branch*, 236 So. 3d at 985-87. Sliney's argument that the manual is qualitatively different—because it supposedly cements a scientific consensus—is unpersuasive. As a federal appeals court has observed, "[n]othing in *Roper* leads us to believe that the Justices drew the line at age eighteen based exclusively on their perception of a scientific certainty that an individual's brain and cognitive functions undergo a metamorphosis at precisely that age." *United States v. Gonzalez*, 981 F.3d 11, 20 (1st Cir. 2020).

Sliney v. State, 362 So. 3d 186, 189 (Fla. 2023).

Sliney's age at the time he chose to murder the victim in this case was found as a mitigator by the trial court. (SPR 127). Notably, Sliney did not challenge this finding either on direct appeal or in his previously filed motions for post-conviction relief.

The timeliness of Sliney's successive motion was clearly a matter for the Florida Supreme Court which is the final arbiter of Florida law. Nonetheless, even if this Court were to address that antecedent and dispositive question, the state court ruling on timeliness was clearly correct under the facts and law outlined

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[11] See Sara B. Johnson, Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, 45 J. Adolescent Health 216 (September 1, 2009), available at http://www.ncbi.nlm.nih.gov/pmc/articles/pmc2892678/ (noting the difficulty in

above. This Court lacks jurisdiction over cases that do not present federal questions. 28 U.S.C. § 1257; Johnson v. Williams, 568 U.S. 289, 309 (2013) (Scalia, J., concurring) (noting that 28 U.S.C. § 1257 imposes a federal-question requirement as a condition of this Court's appellate jurisdiction). The Florida Supreme Court's disposal of this case on state-law procedural grounds deprives this Court of jurisdiction. Michigan v. Long, 463 U.S. 1032, 1041 (1983). This Court recently reiterated that it "will not take up a question of federal law in a case 'if the decision of the state court rests on a state law ground that is *independent* of the federal question and *adequate* to support the judgement.'" Cruz v. Arizona, 143 S. Ct. 650, 658 (2023) (quoting Lee v. Kemna, 534 U.S. 362, 375 (2002)) (emphasis in original). see also Dugger v. Adams, 489 U.S. 401, 410 n.6 (1989) (state procedural bar is "adequate" that has been "consistently or regularly applied") (quoting Johnson v. Mississippi, 486 U.S. 578, 589 (1988)).

A defendant does not have an unlimited right to continue to litigate (and relitigate) the validity of their conviction and sentence, and such a limited right must be balanced against the State's competing and substantial interest in the finality of judgments in criminal cases. Application of a time bar in this case does not conflict with any precedent from this Court or present an unsettled or important question for review.

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establishing causal relationships from brain scan studies and observing that subjectivity exists in interpreting and conducting such studies).

Reasonable time limits on post-conviction challenges to convictions and sentences are common under both state and federal law. See e.g., Panetti v. Quarterman, 551 U.S. 930, 945 (2007) (recognizing that the one-year limitations period under the AEDPA "safeguards the accuracy of state court judgments by requiring resolution of constitutional questions while the record is fresh and lends finality to state court judgments within a reasonable time"); Banister v. Davis, 140 S. Ct. 1698, 1710 (2020) (recognizing the AEDPA was designed "to prevent delay and protect finality").

There is no conflict or important question of law presented by this issue. Certiorari should be denied.

Failure to Hold a Hearing on an Untimely and Meritless Claim is Purely a Question of State Law

As noted above, Sliney's underlying Roper claim was denied without a hearing because it was untimely and procedurally barred under well-established state law.[12] Sliney separately argues that due process required that he be provided with an evidentiary hearing in state court to fully develop his claim. (Petition at 6). However, the procedures governing post-conviction claims are a matter of state procedural law --- not the Constitution. See Sellers v. Ward, 135 F.3d 1333, 1339

[12] In addition to finding the claim untimely, the post-conviction court also found the Roper claim procedurally barred. Sliney's age at the time he chose to murder the victim in this case was found as a mitigator by the trial court. (SPR 127). See Carroll v. State, 114 So. 3d 883, 886 (Fla. 2013) ("Thus, Carroll's claim, even if proper under 3.851(d)(2)(B) seeking extension of Atkins and Roper, is procedurally barred because it could have been or was raised on appeal or in other postconviction motions.") (citing Simmons v. State, 105 So. 3d 475, 511 (Fla. 2012)).

(10th Cir. 1998) (Observing that Petitioner is "hampered by the fact no constitutional provision requires a state to grant post-conviction review.") (citing Pennsylvania v. Finley, 481 U.S. 551, 557 (1987)). Interpretation and application of those rules are therefore the prerogative of the Florida Supreme Court.

Florida Rule of Criminal Procedure 3.851(f)(5)(B) permits the summary denial of a successive motion for post-conviction relief without an evidentiary hearing "[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief." Williamson v. State, 961 So. 2d 229, 234 (Fla. 2007). Post-conviction claims may be summarily denied when they are facially or legally insufficient, procedurally barred, or refuted by the record. Connor v. State, 979 So. 2d 852, 868 (Fla. 2007). That was clearly the case here – where the motion was untimely and meritless under binding precedent.

The constitutional pretensions of this claim are non-existent. Post-conviction procedures provided by the State of Florida, including those governing evidentiary hearings, are matters of state law. See Murray v. Giarratano, 492 U.S. 1 (1989) (noting post-conviction review is generally governed by state procedures not a constitutional mandate) (plurality opinion); Lackawanna Cty. Dist. Att'y v. Coss, 532 U.S. 394 (2001) (observing that states have generally created procedures for post-conviction review, "even though there is no constitutional mandate that they do so"). Moreover, reasonable conditions on the granting of post-conviction hearings are common and serve judicial efficiency and finality. Petitioner does not assert any

conflict among state or federal courts on this question.[13] Accordingly, certiorari should be denied.

Sliney's Exemption Claim is Meritless

Assuming for a moment Sliney overcomes the state court timeliness bar to his underlying claim, this Court should not grant certiorari because it is substantively meritless. There is no conflict with this Court's holding in Roper. Sliney was nineteen at the time he murdered Mr. Blumberg. Sliney effectively argues that the brains of juveniles are not all that different from adults under twenty-one and therefore Roper's exemption should apply to those under twenty-one.

Things have not sufficiently changed since Roper to warrant overruling it and extending its protections to young adults under twenty-one. Roper itself recognized the "qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Roper, 543 U.S. at 574. All of the twenty-eight death penalty jurisdictions in this country, along with the U.S. military, set the age of death- eligibility at eighteen.

Other indicia of societal values-some of which this Court relied on in Roper indicate eighteen is the appropriate age for death eligibility. Eighteen is the age when an individual may voluntarily join the military and when males must register for the draft. 10 U.S.C. § 505(a); 50 U.S.C. § 3803. It is

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[13] For example, the AEDPA sets rather stringent conditions on holding evidentiary hearings in federal court. See Shinn v. Ramirez, 596 U.S. 366, 371 (2022).

the age of voting eligibility, the age one may be summoned to sit on a jury and decide whether to impose death on a defendant, and the age one acquires the unrestricted right to marry. Where abortion is legal, women of eighteen (and in some circumstances younger) are deemed sufficiently mature to decide to terminate an unborn child. Since eighteen is the age at which our society deems an adult capable of making these decisions, it is the highest age at which death-eligibility for the much simpler decision *not* to kill someone should rest. See Roper, 543 U.S. at 619 (Scalia, J., dissenting with Rehnquist, C.J., and Thomas., J.) ("Serving on a jury or entering into marriage also involve decisions far more sophisticated than the simple decision not to take another's life.").

In Branch v. State, 236 So. 3d 981, 987 (Fla. 2018) the Florida Supreme Court observed that this Court had not altered its Eighth Amendment jurisprudence after Roper, and still identifies eighteen as the critical age for purposes of the Eighth Amendment. (citing Miller v. Alabama, 567 U.S. 460, 465 (2012)) (prohibiting mandatory sentences of life without parole for homicide offenders who committed their crimes before the age of eighteen); Graham v. Florida, 560 U.S. 48, 74–75 (2010) (prohibiting sentences of life without parole for nonhomicide offenders who committed their crimes before the age of eighteen). Here, Sliney's more recent AAIDD Manual and its reliance on similar research studies does not alter the rationale underlying Roper and subsequent cases. There

is no compelling reason for this Court to reexamine and expand this precedent. The Eighth Amendment does not prohibit a death sentence for a defendant, like Sliney, who was nineteen at the time of the murder.

Aside from the precedent foreclosing this claim, Sliney would present a poor case for extending Roper. In only providing little weight to Sliney's age as a mitigator, the trial court stated:

> No evidence was presented that his emotional age was different than his actual age. He had graduated from high school and was gainfully employed. The Defendant's youthful age at the time of the crime is a mitigating factor, but accorded little weight by this Court.

(SPR 127). The sentencing order reflected that Sliney was gainfully employed at the time of the murder. Sliney's "gainful" employment was that of half manager/owner of a teen club where he was earning approximately $500 per week.

The ever-changing views of the scientific and medical community are not the correct place to look for expanding exemption-from-execution claims to whole new categories of individuals. See Miller v. Alabama, 567 U.S. 460, 510-11 (2012) (Alito, J., dissenting) (noting the philosophical basis for the evolving-standards-of-decency test was "problematic from the start" but, at least, it is an objective test when based on the views of state legislatures and Congress); Roper v. Simmons, 543 U.S. at 616 (Scalia, J ., dissenting with Rehnquist, C.J., and Thomas, J.) ("If the Eighth Amendment set forth an ordinary rule of law, it would indeed be the role of this Court to say what the law is. But the Court having pronounced that the Eighth

Amendment is an ever-changing reflection of "the evolving standards of decency" of our society, it makes no sense for the Justices then to *prescribe* those standards rather than discern them from the practices of our people."). See also Moore v. Texas, 581 U.S. 1 (2017) (explaining that Eighth Amendment jurisprudence, while informed by the medical community's standards, does not adhere "to everything stated in the latest medical guide"); Hall v. Florida, 572 U.S. 701, 721 (2014) (stating that while the Court does not disregard the views of medical experts, experts "do not dictate" the Court's decision); United States v. Johnson, 2020 WL 8881711, at *4 (E.D. La. July 13, 2020) (recognizing what is scientifically defensible and constitutionally permissible are not the same because scientific consensus and national consensus are two different things). That is doubly true where, as here, this Court already accounted for the information Sliney now presents that seventeen-year-olds do not immediately morph into responsible adults when they turn eighteen.[14]

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[14] The Court most recently addressed age in the context of juvenile sentencing in Jones v. Mississippi, 141 S. Ct. 1307 (2021). There, the petitioner argued that to sentence a juvenile homicide offender to life without parole, the sentencer must make a finding of permanent incorrigibility. The Court rejected that argument. In doing so, the Court explained that for juvenile homicide offenders, "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." Id. at 1313. In other words, if a juvenile homicide offender receives a life-without-parole sentence from a sentencer with "discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment," the Eighth Amendment is satisfied. Id. at 1314. The Court also stressed in Jones that courts should "rely on what *Miller* and *Montgomery* said—that is, their explicit language addressing the precise question before" them, rather than "draw[ing]

In short, not much has changed since Roper. Sliney's long belated attempt to attack his death sentence because of his age is uncertworthy.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court DENY the petition for writ of certiorari.

Respectfully submitted,

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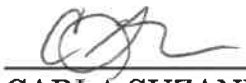

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inferences about what [they] 'must have done' in order for the decisions to 'make any sense.'" Id. at 1321–22.