

No.

IN THE SUPREME COURT OF THE UNITED STATES

HUNTER THOMAS BOESCH, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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368 So.3d 454

District Court of Appeal of Florida, Fourth District.

Hunter Thomas BOESCH, Appellant,

v.

STATE of Florida, Appellee.

No. 4D22-90

|

[July 19, 2023]

Synopsis

Background: Defendant was convicted in the Circuit Court, 19th Judicial Circuit, St. Lucie County, [William L. Roby, J.](#), first degree felony murder, attempted robbery, attempted burglary of dwelling, and conspiracy to commit robbery or burglary, and sentenced to life in prison without parole. Defendant appealed.

Holdings: The District Court of Appeal, May, J., held that:

mandatory sentence of life without parole, on first degree felony murder conviction, did not violate Eighth Amendment's prohibition on cruel and unusual punishment, and

court erred in imposing \$25 for investigative costs.

Affirmed in part, reversed and remanded in part.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

***455** Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Saint Lucie County; [William L. Roby](#), Judge; L.T. Case No. 562017CF000787A.

Attorneys and Law Firms

[Carey Haughwout](#), Public Defender, and Mara C. Herbert, Assistant Public Defender, West Palm Beach, for appellant.

[Ashley Moody](#), Attorney General, Tallahassee, and [Heidi L. Bettendorf](#), Senior Assistant Attorney General, West Palm Beach, for appellee.

Opinion

[May, J.](#)

The defendant appeals his conviction and sentence for first degree felony murder, attempted robbery, attempted burglary of a dwelling, and conspiracy to commit robbery/burglary. He argues [section 775.082\(1\)\(a\), Florida Statutes \(2016\)](#), is unconstitutional as applied to him. He also argues, and the State agrees, the trial court erred in imposing a \$25 investigative cost. We affirm his sentence but reverse the \$25 investigative cost.

The charges arose from an attempt to rob a local drug dealer. During the incident, a person was shot and killed. The jury found the defendant guilty on four charges.

On the first-degree felony murder charge, the trial court sentenced the defendant to life in prison without parole. The defendant received a concurrent sentence of five years' prison for counts two and three, and fifteen years' concurrent on count four. The trial court imposed a \$25 investigative cost.¹

On appeal, the defendant maintains his sentence under [section 775.082](#) is unconstitutional as applied. He also continues to dispute the \$25 investigative cost.

It is well established mandatory life without parole for persons under eighteen violates the Eighth Amendment's prohibition on cruel and unusual punishment. *E.g.*, [Roper v. Simmons](#), 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (discussing mental deficiencies in juveniles justifying ban on mandatory life sentences); [Amend VIII, U.S. Const.](#) But here, the defendant wants that rule to apply even though he was nineteen when the crimes were committed. Relying on [Graham v. Florida](#), 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) and [Miller v. Alabama](#), 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), he argues persons between the ages of 18 and 21 should be afforded the same protection against life sentences because their minds, like those of persons under eighteen, have not fully developed. [Graham](#) and [Miller](#) have not extended their protection beyond the age of eighteen.

The U.S. Supreme Court has drawn a bright line on this issue. "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood." [Roper](#), 543 U.S. at 574, 125 S.Ct. 1183. The defendant had crossed that age line when these crimes, including a *456 homicide, were committed. Thus, he is not entitled to the protection of [Graham](#) and [Miller](#). For these reasons, we affirm his conviction and sentence.

The defendant correctly argues however the trial court erred in imposing \$25 for investigative costs. Before a trial court can impose investigative costs, the defendant must be convicted of a crime and the investigative agency must request them. [§ 938.27\(1\), Fla. Stat. \(2016\)](#). Here, although the defendant was convicted of a crime, the investigative agency did not request investigative costs. We therefore reverse the trial court's imposition of the \$25 investigative cost and remand the case to the trial court to strike it.

Affirmed in part; reversed and remanded in part.

Ciklin and Conner, JJ., concur.

All Citations

368 So.3d 454, 48 Fla. L. Weekly D1420

Footnotes

- ¹ The defendant filed a motion to correct sentencing error, pursuant to [Rule 3.800\(b\)\(2\), Florida Rule of Criminal Procedure](#), because the cost was imposed without a request from the investigative agency. The motion was not ruled on within the sixty-day time frame and was deemed denied.

Supreme Court of Florida

THURSDAY, DECEMBER 14, 2023

Hunter Thomas Boesch,
Petitioner(s)

v.

State of Florida,
Respondent(s)

SC2023-1167

Lower Tribunal No(s).:

4D22-0090;

562017CF000787AXXXXX

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

CANADY, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ.,
concur.

A True Copy

Test:

SC2023-1167 12/14/2023

John A. Tomasino

Clerk, Supreme Court

SC2023-1167 12/14/2023



LC

ARGUMENT

POINT I -- APPELLANT'S MANDATORY LIFE SENTENCE WITHOUT PAROLE FOR AN OFFENSE COMMITTED WHEN APPELLANT WAS 19-YEARS-OLD CONSTITUTES EXCESSIVE PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT.

Appellant was 19-years-old at the time of the first-degree felony murder. Recent scientific articles explain that brain development continues into the mid-twenties, rendering young adults more susceptible to peer pressure, less future orientated, and more volatile in emotionally charged settings. The prefrontal cortex, the center of the brain responsible for regulating impulse control, does not reach its functional capacity at age 19. Scientific evidence and literature supports that a 19-year-old offender has the same impulsivity and diminished capacity as a juvenile offender — the qualities that distinguish juveniles from adults do not disappear when an individual enters late adolescence.

There is no scientific basis for treating a 19-year-old differently than a 17-year-old in terms of imposing mandatory life-without-parole sentences. However, Section 775.082(1)(a), Florida Statutes, mandates a sentence of life-without-parole for a 19-year-old teenager without the consideration of the mitigating factors of youth and

degree of participation in the murder. Appellant asserts that because section 775.082(1)(a) prevented the trial court from considering these mitigating factors before imposing a mandatory life sentence, the statute is unconstitutional as applied to him and violates the prohibition against excessive punishment set forth in the Eighth Amendment to the United States Constitution.

Standard of Review

The standard of review of a constitutional claim concerns a pure question of law is subject to de novo review. *Henry v. State*, 175 So. 3d 675, 676-77 (Fla. 2015). “The legality of a sentence is a question of law and is subject to de novo review.” *Flowers v. State*, 899 So. 2d 1257, 1259 (Fla. 4th DCA 2005) (citing *Wardlaw v. State*, 832 So. 2d 258, 259 (Fla. 2d DCA 2002)).

Preservation

This issue was preserved by a motion to correct sentence error filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) which raised the issue that section 782.04(1) is unconstitutional as applied to an 19-year-old defendant.

Legal Analysis

“The concept of proportionality is central to the Eighth Amendment.” *Graham v. Florida*, 560 U.S. 48, 59 (2010). The United States Supreme Court has recognized that the Eighth Amendment forbids the imposition of a sentence that is “cruel in its excess of imprisonment” upon any person, including those the law deems adults. See *Weems v. United States*, 217 U.S. 349, 377 (1910). In *Weems*, the Court ruled that the Eighth Amendment prohibits prison sentences of a length disproportionate to the offense. *Id.* at 368.

The right to be free from excessive punishment “flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense.” *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (citations omitted). In determining whether a punishment is excessive or disproportionate, the judiciary retains the ultimate responsibility of construing the Eighth Amendment. *Graham*, 560 U.S. at 67.

a. The United States Supreme Court recognizes that juveniles prosecuted as adults are less culpable than adult offenders.

Scientific evidence of adolescent brain development has confirmed that juveniles are inherently different from adults because the frontal lobes of their brains are still developing. In a trilogy of

decisions, the United States Supreme Court has ruled that juveniles are “constitutionally different from adults for sentencing purposes.” *Miller*, 567 U.S. at 471.

In *Roper v. Simmons*, the Court reiterated the precept that “the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions.” 543 U.S. 551, 560 (2005). The Court held that imposition of the death penalty on defendants who were under age 18 when they committed their crimes violated the Eighth Amendment. *Id.* The Court relied on national consensus and the diminished penological justification attributable to the characteristics of youth. *Id.* at 567, 572-73. The defendant in *Roper* was 17 years and 5 months old at the time of the murder. *Id.* at 556, 618. The Court recognized that juveniles have lessened culpability and are “less deserving of the most severe punishments.” *Id.* at 569.

Likewise, in *Graham*, the Court held that the imposition of life without parole on defendants who were under age 18 at the time of their crimes and who were convicted of non-homicide offenses violated the Eighth Amendment. 560 U.S. at 59, 79. Juveniles reduced culpability stems from the fact that they “have a ‘lack of maturity and an underdeveloped sense of responsibility’; they ‘are

more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and their characters are ‘not as well formed.’” *Id.* (quoting *Roper*, 543 U.S. at 569-70). The Court emphasized, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.” *Id.* at 68. The Court highlighted that the “parts of the brain involved in behavior control continue to mature through late adolescence,” giving rise to a greater possibility of rehabilitation later in life. *Id.* These characteristics make juveniles less susceptible to deterrence and less culpable for their actions, undermining the penological justifications for the most severe punishments, including an automatic sentence of life in prison for a non-homicide offense. *See id.*

In *Miller*, the Court extended the reasoning in *Roper* and *Graham* to hold that mandatory sentences of life without the possibility of parole for homicide offenses are unconstitutional for juvenile offenders. 567 U.S. at 465, 476. The Court emphasized that it has consistently held that statutory sentencing schemes must allow courts to consider the defendant’s youthfulness to ensure that any mandatory sentence is not cruel and unusual by virtue of being

disproportionate to the offender's culpability. *Id.* ("Of special pertinence here, we insisted in these rulings that a sentencer have the ability to consider the mitigating qualities of youth."). The Court recognized that a life sentence for a younger person is effectively a harsher sentence than a life sentence for an older person. To afford dissimilarly situated defendants equal protection of the law, the age of the younger defendants must be taken into account before a mandatory-minimum sentence may be constitutionally imposed. *Id.* at 475.

Although only two years elapsed between *Graham* and *Miller*, the evidence before the Court in *Miller* "indicates that the science and social science supporting *Roper's* and *Graham's* conclusions have become even stronger." *Id.* at 472, n.5. The Court noted that "an ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusions," including research establishing that "adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance." *Id.*

The Eighth Amendment and the Supreme Court are clear— the younger the defendant, the less culpable he is.

Just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in assessing his culpability.

Id. (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982)).

In the instant case, Appellant acknowledges that the holding in *Miller* was limited to defendants 17 years of age and younger but asserts that a mandatory life sentence for a 19-year-old defendant is likewise unconstitutional because of the findings in neuroscience and developmental psychology. From a scientific perspective, a person's 18th birthday is not a rational dividing line for justifying mandatory life-without-parole sentences because the brain continues to develop and change rapidly across all the relevant metrics for several more years.

b. A 19-year-old defendant has the same impulsivity and diminished culpability as a juvenile.

The Supreme Court's juvenile sentencing cases rely on neuroscience and developmental psychology, and advances in these fields show that a 19-year-old is effectively indistinguishable from a 17-year-old in terms of brain development, impulsivity, and an

inability to appreciate the consequences of their actions. The United States Supreme Court has not addressed the constitutionality of a mandatory life sentence for 19-year-olds, and the emerging scientific consensus weighs heavily in favor of affording relief to such defendants.

The legal bright line of 18-years-old being the age of adulthood is at odds with developmental psychology. Drawing the line at 18-years-old is subject to the objection always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. *Roper*, 543 U.S. at 547.

The scientific literature on which the Supreme Court's decisions in *Roper*, *Graham*, and *Miller* are based make clear that the frontal lobe of the cerebral cortex, which is responsible for conscious decision-making, is not fully developed before a human being turns 20-years-old. See e.g., Adriana Galvan et al., *Risk Taking and the Adolescent Brain: Who is at Risk?*, 10 Developmental Sci. F8, F13 (2007) (in study of individuals aged 7 to 29, finding that impulse control continues to develop over the course of adolescence and early adulthood); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, Developmental Rev. 12, 339–373 (1992)

(defining the higher-risk-seeking adolescent period as extending from puberty to the early twenties).

There is strong scientific evidence that indicates there is no significant difference in the brain functioning of young adults in late adolescence (18 to 19-years-old) and 17-year-old juveniles. Advances in brain imaging technology confirm that the very regions of the brain that are associated with voluntary behavior control and regulation of emotional response and impulsivity are structurally immature during adolescence. The frontal lobe (responsible for regulating impulse control) is still structurally immature well into late adolescence. See Nick Straley, *Miller's Promise: Re-Evaluating Extreme Criminal Sentences For Children*, 89 Wash. L. Rev. 963, 970-71 (2014) (“the prefrontal cortex modulates impulsive behavioral urges... However, the prefrontal cortex remains structurally immature until early adulthood, around the mid-twenties.”); see also Arain, Mariam et al., *Maturation of the adolescent brain*. Neuropsychiatric disease and treatment vol. 9 (2013): 449-61.

Research also shows that risky behaviors tend to peak in late adolescence and early adulthood, then decline through the late twenties. See Richard J. Bonnie & Elizabeth S. Scott, *The Teenage*

Brain: Adolescent Brain Research & the Law, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 158, 161 (2013).

Brain development does not abruptly cease at 18; rather, “researchers have found that eighteen to twenty-one-year-old adults are more like younger adolescents than older adults in their impulsivity under conditions of emotional arousal.” Scott, Bonnie, & Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016). This impulsivity “likely influence[s] their criminal conduct,” since “development of brain systems that regulate impulse control is more protracted” than development of the brain’s “reward pathways.” *Id.* at 644, 647. These developmental changes, “which continue into the early twenties” and are responsible for “impetuous, short-sighted decisions,” are “driven by processes of brain maturation that are not under the control of young people.” *Id.* at 647.

Much of what explains the impulsivity of 18-year-olds is the incomplete development of the portions of their brain that regulate emotional responses. Connectivity between the “prefrontal cortex and brain regions that process rewards and respond to emotional and social stimuli” is “not complete until the midtwenties, which is why

aspects of social and emotional functioning, such as impulse control and resistance to peer influence, are slower to mature.” *Id.* at 651- These neuroscientific studies show that while young adults often exhibit mature “cold cognition” (decision-making under ideal or controlled conditions), they remain immature when operating under “hot cognition” (decision making in emotional or stressful situations). *See id.*

Therefore, a 19-year-old does not have a fully developed brain and, under the reasoning in *Miller*, is less responsible for his wrongdoing. A 19-year-old is biologically different from an older adult (with a fully developed brain) and cannot be equally culpable and subject to the severe sentence of mandatory life in prison without the possibility of parole. It is not logical to expect those in late adolescence to have adult levels of decision-making and impulse control as their brains are still not fully developed. Furthermore, this leads to a discrepancy within the criminal system, with youthful adults being forced within the adult system to face potentially negative influences and life-long consequences, though, mentally, they are not any more blameworthy than juvenile offenders in their level of decision-making.

- c. *The national consensus is shifting to recognize that 18 to 21-year-olds should be treated differently than fully mature adults in terms of life sentences with no possibility of parole.*

In the past couple of years, society's standards of decency are evolving to recognize that the mitigating qualities of youth do not suddenly evaporate when a child turns 18-years-old. Several states have revisited the boundary between defendants who are 17-years-old, and thus shielded from the most severe sentence of life without the possibility of parole, and those who are 18 to 21-years-old, and therefore exposed to it.

In 2021, the Washington Supreme Court recognized, based in large part on the unanimous medical scholarship, that “many youthful defendants older than 18 share the same developing brains and impulsive behavioral attributes as those under 18.” *In re Matter of Monschke*, 197 Wash. 2d 305, 311-313 (2021). As a result of the “objective scientific differences between 18- to 20-year-olds” and “persons with fully developed brains,” the Washington Supreme Court extended *Miller*'s protections to persons under age 21. *Id.* at 324–25, 329.

The Massachusetts Supreme Court recognized in 2020 that “it likely is time for us to revisit the boundary between defendants who

are seventeen years old and thus shielded from the most severe sentence of life without the possibility of parole, and those who are eighteen years old and therefore exposed to it.” *Commonwealth v. Watt*, 146 N.E. 414, 428 (Mass. 2020).

In July 2022, a Massachusetts trial court followed the Massachusetts Supreme Court’s cue and extended *Miller*’s protections to 18- and 19- year-olds. See *Commonwealth v. Robinson*, No. 0084CR10975, SJC09265 (Mass. Sup. Ct. July 20, 2022); *Commonwealth v. Mattis*, No. 1184CR11291, SJC-11693 (Mass. Sup. Ct., July 20, 2022).

In 2020, legislators in District of Columbia unanimously passed the Second Look Amendment Act, which entitled all defendants sentenced for crimes committed before they reached the age of 25 to a review of their sentence. D.C. Law 23-274.

In 2018, Vermont passed legislation extending juvenile-court jurisdiction to 19-year-olds. VT. STAT. ANN. tit. 33, § 5201. Michigan and New York have also extended juvenile court jurisdiction through age 18. NAT’L GOVERNORS ASS’N, AGE BOUNDARIES IN JUVENILE JUSTICE SYSTEMS 2 (2021).

The State of Florida, in both the civil and criminal context, has acknowledged that maturation continues into the post-adolescent stage. For example, when a child is committed to the Department of Juvenile Justice the court retains jurisdiction until the child reaches the age of 21. § 985.0301(5)(B)(2), Fla. Stat. (2022). The same is true in the case of dependent children, where the court retains jurisdiction over any child who has been found to be dependent until the child reaches the age of 21. § 39.013(2), Fla. Stat. (2022).

Most significantly, the Youthful Offender Act provides greater protection to offenders between the ages of 18 to 20. § 958.04, Fla. Stat. (2022). Although this protection does not apply to youth who commit the most serious crimes (a capital or life felony). The statute does indicate a recognition of the difference between 18-year-olds and offenders in their early twenties for purposes of criminal culpability.

Furthermore, there are important societal lines that are drawn at age 21, such as drinking alcohol, gambling in a casino, renting a car, purchasing a handgun, obtaining a concealed weapon permit, and being a state representative. Lines originally drawn at age 18 have recently been redrawn or extended, for example raising the

federal minimum age for sale of tobacco products from 18 to 21 years in 2019.

Heightened age requirements apply to activities for which a lack of responsibility may have significant, and potentially irreversible consequences for the older adolescent who behaves impulsively, without reflection, and without a greater sense of, or capacity for, responsible action (e.g., consuming alcohol and possessing a handgun). See § 562.11(I)(a)1., Fla. Stat. (2022) (unlawful to sell or serve alcohol to persons under age 21); 18 U.S.C. Section 922(b)(1), (c)(1) and 27 C.F.R. Section 478.99(b) (federal prohibition on sale of handguns and handgun ammunition to persons under age 21).

While there is no doubt that some lines for adulthood have been drawn at age 18, the changes discussed above reflect an emerging trend toward recognizing that individuals between the ages of 18 and 21 years old should be treated differently from fully mature adults.

d. Appellant's sentence of life-without-parole is unconstitutional as it was imposed without the trial court's consideration of the mitigating factors of youth.

The imposition of an automatic life sentence on Appellant, without allowing the trial court to consider his reduced culpability as

an adolescent offender, is disproportionate punishment in violation of the Eighth Amendment.

As the Supreme Court observed in *Graham*, “Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.” 560 U.S. at 70.

The Court equated a life sentence with a “denial of hope.” *Id.* at 70. The Court observed that “life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender’s life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration.” *Id.* at 69. The Court said a life sentence “means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days.” *Id.* at 70 (internal quotation marks and bracket omitted).

Additionally, as one commentator said, life sentences:

communicate to offenders that they have forfeited their right to ever walk again among society. They have been forever banished. No act by the incarcerated individual can change that assessment—neither the number of degrees attained, books written, or prison programs developed nor the model behavior demonstrated can impact the inevitable outcome of death in prison. Even in the face of great internal and genuine transformation, these offenders will be left to literally molder in prison until death.

Jessica S. Henry, *Death-in-Prison Sentences: Overutilized and Underscrutinized*, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?* 76 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2012); *see also id.* at 73 (“John Stuart Mill perceived life imprisonment as ‘living in a tomb, there to linger out what may be a long life ... without any of its alleviation or rewards—debarred from all pleasant sights and sounds, and cut off from earthly hope.’”).

Further, in *Miller*, the Court said that life in prison reflects “an irrevocable judgment about an offender’s value and place in society.” 567 U.S. at 473-475. The Court recognized that, “By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a *risk of disproportionate punishment.*” *Id.* at 479 (emphasis added).

In the instant case, while Appellant is no longer a juvenile, he was barely a legal adult at 19-years-old— he was still a *teenager*. As explained in the preceding sections, everything *Graham* and *Miller* said about transient brain development and reduced culpability applies to 19-year-olds. At the time of the offenses, Appellant was still undergoing neurological development; he was more impulsive, less able to appreciate consequences and risk.

A mandatory life sentence ignores that Appellant has a high capacity for reform and rehabilitation because ongoing brain development indicates amenability for change. *See Johnson v. Texas*, 509 U.S. 350, 367 (1993) (holding that jury was free to consider 19-year-old defendant's youth when determining whether there was probability that he would continue to commit violent acts in the future and stating, "youth 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." (quotation omitted)).

Further, considering Appellant's relevant culpability, the propriety of mandatory life-without-parole for a 19-year-old defendant convicted under a principal theory of accountability is questionable. Although Appellant was not the actual shooter and had

no intent to kill, he received a mandatory life-without-parole sentence, the same sentence applicable to the person who pulled the trigger and, with the exception of death, the harshest punishment under law.

Both *Graham* and *Miller* suggest that life sentences are, in many ways, like death sentences and that given the immaturity, vulnerability and changeability of juvenile offenders, life sentences may only be imposed after an individualized sentencing hearing where defendants can introduce mitigating evidence and attempt to prove that their lives are not irredeemable. To be sure, *Graham* and *Miller* applied to juveniles, but neither case forecloses scrutiny of adult life sentences on defendants who, like the juveniles, do not have a fully developed brain.

The United States Supreme Court has never addressed whether a 19-year-old defendant can automatically be sentenced to life in prison for a homicide offense, and resolving that question as to juveniles is not equivalent to passing on the applicability of *Miller* to 19-year-olds. The question of whether mandatory life imprisonment without parole is constitutional for someone older than 18 was not before the court in *Miller*, and it would be contrary to the Court's

traditional practice to decide constitutional questions unnecessarily. *See Bowen v. United States*, 422 U.S. 916, 920 (1975). Nevertheless, the Florida Supreme Court has construed *Roper* to draw such a bright line and that interpretation of *Roper* binds this Court. *See State v. Michel*, 257 So.3d 3 (Fla. 2018). Accordingly, relief for Appellant can only come from the Florida Supreme Court revisiting this question— which is merited in light of the developments in scientific evidence on the hallmark characteristics of youth, and the shift in national consensus.

Here, foreclosing Appellant’s ability to prove why his life still has value is cruel and unusual. Nevertheless, section 775.082(1)(a) prohibited the trial court from considering Appellant’s youthfulness before imposing sentence. A 19-year-old is no less human than juveniles are and still has the same biological difference. Such a defendant possesses no less dignity. Indeed, it would be odd to conclude that a consequence of aging is that one’s life automatically loses its purpose and meaning.

Any contention that Appellant, at the age of 19, was meaningfully more culpable than a person aged 17, or was equally culpable as an offender aged 26, betrays all available scientific

evidence. As such, any such contention is specious, arbitrary, and capricious, and it must give way to the Eighth Amendment.

Appellant did not have a fully developed brain at the time of his crimes, and thus the Eighth Amendment of the United States Constitution prohibits the mandatory imposition of a life without parole sentence. Appellant respectfully requests that this Court reverse his sentence, and remand for a resentencing hearing at which the trial court may consider his youthfulness before imposing sentence. Alternatively, Appellant requests that this Court issue a written opinion construing the Eighth Amendment claim raised by this case, so that Appellant can seek further review before a higher court.

STATE OF FLORIDA)
) Case No. 56-2017-CF-000787-A
-VS-)
)
Hunter Thomas Boesch)
 Defendant)

VERDICT

WE, the Jury, find the Defendant, Hunter Thomas Boesch.,

As to Count I:
(select only one)

- (☒) Guilty of First Degree Felony Murder as charged in the indictment
- (☐) Guilty of Manslaughter a lesser included crime
- (☐) Not Guilty

If you find the Defendant guilty, you must answer the following question:

1. Do you find, beyond a reasonable doubt, that during the commission of the crime the defendant actually possessed a firearm, a .25 caliber handgun?
(select only one)

- () Yes
(✓) No

As to Count II:
(select only one)

- (✓) Guilty of Attempted Robbery as charged in the indictment
() Not Guilty

If you find the Defendant guilty, you must answer the following questions.

1. Do you find, beyond a reasonable doubt, that during the commission of the Attempted Robbery the defendant wore a mask or other device to conceal his identity?
(select only one)

☐ Yes

☒ No

2. Do you find, beyond a reasonable doubt, that during the commission of the Attempted Robbery the defendant actually possessed a firearm, a .25 caliber handgun?
(select only one)

☐ Yes

☒ No

As to **Count III**:
(select only one)

☒ Guilty of Attempted Burglary as charged in the indictment

☐ Not Guilty

If you find the Defendant guilty, you must answer the following questions.

1. Do you find, beyond a reasonable doubt, that the structure was a dwelling?
(select only one)

☒ Yes

☐ No

2. Do you find, beyond a reasonable doubt, that during the commission of the Attempted Burglary the defendant wore a mask or other device to conceal his identity?
(select only one)

☐ Yes

☒ No

3. Do you find, beyond a reasonable doubt, that during the commission of the Attempted

2

Burglary the defendant actually possessed a firearm, a .25 caliber handgun?
(select only one)

() Yes

(✓) No

As to **Count IV**:
(select only one)

(✓) Guilty of Conspiracy to commit Burglary of a Dwelling with a Firearm as charged
in the indictment

() Not Guilty

SO SAY WE ALL.

THIS 15 DAY OF October, 2021.


FOREPERSON

IN THE CIRCUIT/COUNTY COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST LUCIE COUNTY, FLORIDA

☐ Modified
☐ Resentence
☐ Amended
☐ Corrected
☐ Mitigated
☐ Community Control Violator
☐ Probation Violator

Case Number: 562017CF000787AXXXX

STATE OF FLORIDA

- vs -

HUNTER THOMAS BOESCH

Defendant

☐ Sexual Predator

☐ Sex Offender

☐ Minor Victim

☐ Sentenced in Absentia

J U D G M E N T

The Defendant, HUNTER THOMAS BOESCH being personally before this Court represented by Attorney RONALD ANDERSEN HURST JR, the Attorney of record, and the State represented by STEPHEN SPERON GOSNELL and JASON BRUIN, and having:

X been tried and found guilty by Jury of the following crime(s).

AS TO COUNT(s):

1, 2, 3, 4

☐ entered a plea of guilty to the following crime(s).
☐ entered a plea of nolo contendere to the following crime(s)
☐ Admitted Violation of Probation
☐ Found Guilty of Violation of Probation
☐ Admitted a Violation of Community Control
☐ Found Guilty of Violation of Community Control

Count	Crime	Offense Statute Number(s)	Level / Degree	OBTS Number
1	FIRST DEGREE FELONY MURDER (REDUCED)	782.04(1)(A)2, 782.04(4) AND 777.011	F-CAPITAL	5601234572
2	ATTEMPTED ROBBERY (REDUCED)	812.13(2)(C), 777.011, AND 777.04(1)	F-3	5601234572
3	ATTEMPTED BURGLARY OF A DWELLING (REDUCED)	810.02(3)(A), 777.011, AND 777.04(1)	F-3	5601234572
4	CONSPIRACY TO COMMIT ROBBERY/ BURGLARY	812.13(1), 812.13(2)(A), 810.02(3), 777.011, 775.0845 AND	F-2	5601234572

AP/DC DOC

Page 1 of 2

X and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT
the defendant is hereby ADJUDICATED GUILTY of the above crime(s). ; AS TO COUNT(s) 1, 2, 3, 4

_____ and being a qualified offender pursuant to Florida Statute 943.325 - defendant shall be required to submit DNA
samples as required by law

_____ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

AP/DC DOC

Page 2 of 2

☐ Violation of Probation, Previously Adjudged Guilty
☐ Violation of Community Control, Previously Adjudged Guilty
☐ Resentenced
☐ Modified
☐ Amended
☐ Mitigated
☐ Corrected

Case Number 562017CF000787AXXXXX

OBTS Number 5601234572

Defendant **HUNTER THOMAS BOESCH**

SENTENCE

(As to Count 1)

The Defendant, being personally before this Court, accompanied by the Defendant's Attorney of record RONALD ANDERSEN HURST JR and having been adjudicated guilty, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defense should not be sentenced as provided by law, and no cause being shown

☐ and the Court having on ☐ deferred imposition of sentence until this date.

☐ and the Court having previously entered a judgment in this case on ☐ now resentence the Defendant.

☐ and the Court having placed the Defendant on ☐ and having subsequently revoked the Defendant's ☐.

It Is The Sentence Of Court that:

☐ The defendant pay a fine of ☐ pursuant to section 775.083, Florida Statutes, plus ☐ as the 5% surcharge required on 938.04, Florida Statutes.

☒ **The Defendant is hereby committed to the custody of the Department of Corrections.**

☐ The Defendant is hereby committed to the custody of the Sheriff of St. Lucie County Florida.

☐ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable.):

☒ **For a term of Natural Life.**

☐ For a term of Natural Life with a 25 year mandatory minimum

☐ For a term of ☐

☐ The SENTENCE IS SUSPENDED for a period of ☐ subject to conditions set forth in this Order.

If 'split' sentence complete the appropriate Paragraph.

☐ Followed by a period of ☐ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ Followed by a period of ☐ probation under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ However, after serving a period of imprisonment in PRISON, the balance of the sentence will be suspended and the Defendant will be on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control as set forth in a separate order.

In the event the Defendant is ordered to serve additional, split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

562017CF000787AXXXXXX

SPECIAL PROVISIONS
(As to Count 1)

By appropriate notation, the following provisions apply to the sentence imposed
Mandatory/ Minimum Provisions:

<i>Firearm</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Drug Trafficking</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 893.135, Florida Statutes, is hereby imposed for the sentence specified in this count, and that the Defendant pay a fine of \$____, pursuant to section 893.135, Florida Statutes, plus \$____ as a 5% surcharge.
<i>Law Enforcement</i>	_____	It is further ordered that the _____ minimum mandatory imprisonment provision of section 784.07, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Controlled Substance Within 1,000 Feet of School</i>	_____	It is further ordered that the 3 year minimum imprisonment provision of section 893.13(1)(c), Florida Statutes, is hereby imposed for the sentence in this count.
<i>Habitual Felony Offender</i>	_____	The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
<i>Habitual Violent Felony</i>	_____	The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of sections 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order as stated on the record in open court.
<i>Violent Career Criminal</i>	_____	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes. A minimum of _____ must be served prior to release. The requisite findings of the Court are set forth in a separate order or stated on the record in open court. (For crimes committed on or after May 24, 1997.)
<i>Capital Offense</i>	_____	It is further that the Defendant shall serve no less than 25 years in accordance with provisions of section 775.082(1), Florida Statutes. (For first degree murder committed prior to May 25, 1994, and for any other capital felony committed prior to October 1, 1995.)
<i>Prison Releasee</i>	_____	Defendant is adjudged a prison releasee reoffender in accordance with the provision of section 775.082(9), FL Statutes.
<i>Sexual Predator</i>	_____	Defendant is adjudged a sexual predator in accordance with provision of section 775.21, Florida Statutes.
Other Provisions: Jail Credit	X _____	<u>It is further ordered that the Defendant shall be allowed a total of 1728 as credit for time incarcerated before imposition of this sentence.</u>
<i>Credit for Time Served in Resentencing After Violation of Probation or Community Control</i>	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest _____ as a violator following Release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989)
	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Correction shall apply original jail time credit and shall compute and apply credit for time served on case/count _____ (Offenses committed between October 1, 1989, and December 31, 1993)
	—	The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6), Florida Statutes.
	—	The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)), Florida Statutes.
	_____	It is further ordered that the Defendant be allowed _____ time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/ count . (Offenses committed on or after January 1, 1994)
<i>Consecutive/ Concurrent As To Other Counts</i>	_____	It is further ordered that the sentence imposed for this count shall run _____ with the sentence set forth in count _____ of this case.

☐ Violation of Probation, Previously Adjudged Guilty
☐ Violation of Community Control, Previously Adjudged Guilty
☐ Resentenced
☐ Modified
☐ Amended
☐ Mitigated
☐ Corrected

Case Number 562017CF000787AXXXXX

OBTS Number 5601234572

Defendant **HUNTER THOMAS BOESCH**

SENTENCE

(As to Count 2)

The Defendant, being personally before this Court, accompanied by the Defendant's Attorney of record RONALD ANDERSEN HURST JR and having been adjudicated guilty, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defense should not be sentenced as provided by law, and no cause being shown

☐ and the Court having on ☐ deferred imposition of sentence until this date.

☐ and the Court having previously entered a judgment in this case on ☐ now resentence the Defendant.

☐ and the Court having placed the Defendant on ☐ and having subsequently revoked the Defendant's ☐.

It Is The Sentence Of Court that:

☐ The defendant pay a fine of ☐ pursuant to section 775.083, Florida Statutes, plus ☐ as the 5% surcharge required on 938.04, Florida Statutes.

☒ **The Defendant is hereby committed to the custody of the Department of Corrections.**

☐ The Defendant is hereby committed to the custody of the Sheriff of St. Lucie County Florida.

☐ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable.):

☐ For a term of Natural Life.

☐ For a term of Natural Life with a 25 year mandatory minimum

☒ **For a term of 5.00 YEAR(S)**

☐ The SENTENCE IS SUSPENDED for a period of ☐ subject to conditions set forth in this Order.

If 'split' sentence complete the appropriate Paragraph.

☐ Followed by a period of ☐ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ Followed by a period of ☐ probation under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ However, after serving a period of imprisonment in PRISON, the balance of the sentence will be suspended and the Defendant will be on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control as set forth in a separate order.

In the event the Defendant is ordered to serve additional, split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

562017CF000787AXXXXXX

SPECIAL PROVISIONS
(As to Count 2)

By appropriate notation, the following provisions apply to the sentence imposed
Mandatory/ Minimum Provisions:

<i>Firearm</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Drug Trafficking</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 893.135, Florida Statutes, is hereby imposed for the sentence specified in this count, and that the Defendant pay a fine of \$____, pursuant to section 893.135, Florida Statutes, plus \$____ as a 5% surcharge.
<i>Law Enforcement</i>	_____	It is further ordered that the _____ minimum mandatory imprisonment provision of section 784.07, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Controlled Substance Within 1,000 Feet of School</i>	_____	It is further ordered that the 3 year minimum imprisonment provision of section 893.13(1)(c), Florida Statutes, is hereby imposed for the sentence in this count.
<i>Habitual Felony Offender</i>	_____	The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
<i>Habitual Violent Felony</i>	_____	The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of sections 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order as stated on the record in open court.
<i>Violent Career Criminal</i>	_____	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes, A minimum of _____ must be served prior to release. The requisite findings of the Court as set forth in a separate order or stated on the record in open court. (For crimes committed on or after May 24, 1997.)
<i>Capital Offense</i>	_____	It is further that the Defendant shall serve no less than 25 years in accordance with provisions of section 775.082(1), Florida Statutes. (For first degree murder committed prior to May 25, 1994, and for any other capital felony committed prior to October 1, 1995.)
<i>Prison Releasee</i>	_____	Defendant is adjudged a prison releasee reoffender in accordance with the provision of section 775.082(9), FL Statutes.
<i>Sexual Predator</i>	_____	Defendant is adjudged a sexual predator in accordance with provision of section 775.21, Florida Statutes.
Other Provisions: Jail Credit	X	<u>It is further ordered that the Defendant shall be allowed a total of 1728 as credit for time incarcerated before imposition of this sentence.</u>
<i>Credit for Time Served in Resentencing After Violation of Probation or Community Control</i>	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following Release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989)
	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Correction shall apply original jail time credit and shall compute and apply credit for time served on case/count (Offenses committed between October 1, 1989, and December 31, 1993)
	—	The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6), Florida Statutes.
	—	The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)), Florida Statutes.
	_____	It is further ordered that the Defendant be allowed _____ time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/ count . (Offenses committed on or after January 1, 1994)
<i>Consecutive/ Concurrent As To Other Counts</i>	X	<u>It is further ordered that the sentence imposed for this count shall run CONCURRENT with the sentence set forth in count 1 of this case.</u>

☐ Violation of Probation, Previously Adjudged Guilty
☐ Violation of Community Control, Previously Adjudged Guilty
☐ Resentenced
☐ Modified
☐ Amended
☐ Mitigated
☐ Corrected

Case Number 562017CF000787AXXXXX
OBTS Number 5601234572

Defendant HUNTER THOMAS BOESCH

SENTENCE

(As to Count 3)

The Defendant, being personally before this Court, accompanied by the Defendant's Attorney of record RONALD ANDERSEN HURST JR and having been adjudicated guilty, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defense should not be sentenced as provided by law, and no cause being shown

☐ and the Court having on ☐ deferred imposition of sentence until this date.

☐ and the Court having previously entered a judgment in this case on ☐ now resentence the Defendant.

☐ and the Court having placed the Defendant on ☐ and having subsequently revoked the Defendant's ☐.

It Is The Sentence Of Court that:

☐ The defendant pay a fine of ☐ pursuant to section 775.083, Florida Statutes, plus ☐ as the 5% surcharge required on 938.04, Florida Statutes.

☒ **The Defendant is hereby committed to the custody of the Department of Corrections.**

☐ The Defendant is hereby committed to the custody of the Sheriff of St. Lucie County Florida.

☐ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable.):

☐ For a term of Natural Life.

☐ For a term of Natural Life with a 25 year mandatory minimum

☒ **For a term of 5.00 YEAR(S)**

☐ The SENTENCE IS SUSPENDED for a period of ☐ subject to conditions set forth in this Order.

If 'split' sentence complete the appropriate Paragraph.

☐ Followed by a period of ☐ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ Followed by a period of ☐ probation under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ However, after serving a period of imprisonment in PRISON, the balance of the sentence will be suspended and the Defendant will be on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control as set forth in a separate order.

In the event the Defendant is ordered to serve additional, split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

562017CF000787AXXXXXX

SPECIAL PROVISIONS
(As to Count 3)

By appropriate notation, the following provisions apply to the sentence imposed
Mandatory/ Minimum Provisions:

<i>Firearm</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Drug Trafficking</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 893.135, Florida Statutes, is hereby imposed for the sentence specified in this count, and that the Defendant pay a fine of \$____, pursuant to section 893.135, Florida Statutes, plus \$____ as a 5% surcharge.
<i>Law Enforcement</i>	_____	It is further ordered that the _____ minimum mandatory imprisonment provision of section 784.07, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Controlled Substance Within 1,000 Feet of School</i>	_____	It is further ordered that the 3 year minimum imprisonment provision of section 893.13(1)(c), Florida Statutes, is hereby imposed for the sentence in this count.
<i>Habitual Felony Offender</i>	_____	The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
<i>Habitual Violent Felony</i>	_____	The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of sections 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order as stated on the record in open court.
<i>Violent Career Criminal</i>	_____	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes. A minimum of _____ must be served prior to release. The requisite findings of the Court as set forth in a separate order or stated on the record in open court. (For crimes committed on or after May 24, 1997.)
<i>Capital Offense</i>	_____	It is further that the Defendant shall serve no less than 25 years in accordance with provisions of section 775.082(1), Florida Statutes. (For first degree murder committed prior to May 25, 1994, and for any other capital felony committed prior to October 1, 1995.)
<i>Prison Releasee</i>	_____	Defendant is adjudged a prison releasee reoffender in accordance with the provision of section 775.082(9), FL Statutes.
<i>Sexual Predator</i>	_____	Defendant is adjudged a sexual predator in accordance with provision of section 775.21, Florida Statutes.
Other Provisions:	X	<u>It is further ordered that the Defendant shall be allowed a total of 1728 as credit for time incarcerated before imposition of this sentence.</u>
Jail Credit		
<i>Credit for Time Served in Resentencing After Violation of Probation or Community Control</i>	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following Release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989)
	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Correction shall apply original jail time credit and shall compute and apply credit for time served on case/count _____ (Offenses committed between October 1, 1989, and December 31, 1993)
	—	The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6), Florida Statutes.
	—	The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)), Florida Statutes.
	_____	It is further ordered that the Defendant be allowed _____ time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/ count . (Offenses committed on or after January 1, 1994)
<i>Consecutive/ Concurrent As To Other Counts</i>	X	<u>It is further ordered that the sentence imposed for this count shall run CONCURRENT with the sentence set forth in count 1 of this case.</u>

☐ Violation of Probation, Previously Adjudged Guilty
☐ Violation of Community Control, Previously Adjudged Guilty
☐ Resentenced
☐ Modified
☐ Amended
☐ Mitigated
☐ Corrected

Case Number 562017CF000787AXXXXX

OBTS Number 5601234572

Defendant **HUNTER THOMAS BOESCH**

SENTENCE

(As to Count 4)

The Defendant, being personally before this Court, accompanied by the Defendant's Attorney of record RONALD ANDERSEN HURST JR and having been adjudicated guilty, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defense should not be sentenced as provided by law, and no cause being shown

☐ and the Court having on _____ deferred imposition of sentence until this date.

☐ and the Court having previously entered a judgment in this case on _____ now resentence the Defendant.

☐ and the Court having placed the Defendant on _____ and having subsequently revoked the Defendant's _____.

It Is The Sentence Of Court that:

☐ The defendant pay a fine of _____ pursuant to section 775.083, Florida Statutes, plus _____ as the 5% surcharge required on 938.04, Florida Statutes.

☒ **The Defendant is hereby committed to the custody of the Department of Corrections.**

☐ The Defendant is hereby committed to the custody of the Sheriff of St. Lucie County Florida.

☐ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable.):

☐ For a term of Natural Life.

☐ For a term of Natural Life with a 25 year mandatory minimum

☒ **For a term of 15.00 YEAR(S)**

☐ The SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If 'split' sentence complete the appropriate Paragraph.

☐ Followed by a period of _____ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ Followed by a period of _____ probation under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

☐ However, after serving a period of imprisonment in PRISON, the balance of the sentence will be suspended and the Defendant will be on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control as set forth in a separate order.

In the event the Defendant is ordered to serve additional, split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

562017CF000787AXXXXXX

SPECIAL PROVISIONS
(As to Count 4)

By appropriate notation, the following provisions apply to the sentence imposed
Mandatory/ Minimum Provisions:

<i>Firearm</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Drug Trafficking</i>	_____	It is further ordered that the _____ minimum imprisonment provisions of section 893.135, Florida Statutes, is hereby imposed for the sentence specified in this court, and that the Defendant pay a fine of \$____, pursuant to section 893.135, Florida Statutes, plus \$____ as a 5% surcharge.
<i>Law Enforcement</i>	_____	It is further ordered that the _____ minimum mandatory imprisonment provision of section 784.07, Florida Statutes, is hereby imposed for the sentence specified in this count.
<i>Controlled Substance Within 1,000 Feet of School</i>	_____	It is further ordered that the 3 year minimum imprisonment provision of section 893.13(1)(c), Florida Statutes, is hereby imposed for the sentence in this count.
<i>Habitual Felony Offender</i>	_____	The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
<i>Habitual Violent Felony</i>	_____	The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of sections 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order as stated on the record in open court.
<i>Violent Career Criminal</i>	_____	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes. A minimum of _____ must be served prior to release. The requisite findings of the Court as set forth in a separate order or stated on the record in open court. (For crimes committed on or after May 24, 1997.)
<i>Capital Offense</i>	_____	It is further that the Defendant shall serve no less than 25 years in accordance with provisions of section 775.082(1), Florida Statutes. (For first degree murder committed prior to May 25, 1994, and for any other capital felony committed prior to October 1, 1995.)
<i>Prison Releasee</i>	_____	Defendant is adjudged a prison releasee reoffender in accordance with the provision of section 775.082(9), FL Statutes.
<i>Sexual Predator</i>	_____	Defendant is adjudged a sexual predator in accordance with provision of section 775.21, Florida Statutes.
Other Provisions:	X	<u>It is further ordered that the Defendant shall be allowed a total of 1728 as credit for time incarcerated before imposition of this sentence.</u>
Jail Credit		
<i>Credit for Time Served in Resentencing After Violation of Probation or Community Control</i>	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following Release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989)
	_____	It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Correction shall apply original jail time credit and shall compute and apply credit for time served on case/count _____ (Offenses committed between October 1, 1989, and December 31, 1993)
	—	The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6), Florida Statutes.
	—	The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)), Florida Statutes.
	_____	It is further ordered that the Defendant be allowed _____ time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/ count . (Offenses committed on or after January 1, 1994)
<i>Consecutive/ Concurrent As To Other Counts</i>	X	<u>It is further ordered that the sentence imposed for this count shall run CONCURRENT with the sentence set forth in count 1 of this case.</u>

____ Violation of Probation, Previously Adjudged Guilty
____ Violation of Community Control, Previously Adjudged Guilty
____ Resentenced
____ Modified
____ Amended
____ Mitigated
____ Corrected

Case Number: 562017CF000787AXXXX

Defendant: HUNTER THOMAS BOESCH

Other provisions, continued:

**Consecutive/Concurrent
To Other Convictions**

It is further ordered that the composite term of all sentences imposed for the counts specified
in this order will run
(check one) ☐ Consecutive To ☐ Concurrent To

Concurrent with the following:

(check one)

- ☐ any active sentence being served.
☐ specific sentences: _____

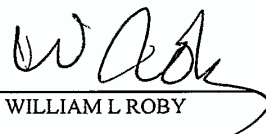
In the event the above sentence is to the Department of Corrections, the Sheriff of St. Lucie County, Florida, is hereby
ordered and directed to deliver the defendant to the Department of Corrections and the facility designated by the
department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statute.

The Defendant in open court was advised of the right to appeal from this Sentence by filing notice of appeal within 30
days from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking the appeal
at the expense of the state upon a showing of indigency.

In imposing the above sentence, the Court further recommends / orders

DONE AND ORDERED in Open Court at St. Lucie County, Florida, on December, 13 2021.

Nunc Pro Tunc to: _____



Circuit/County Judge WILLIAM L ROBY