No. 23-830

In the

Supreme Court of the United States

LONNIE ALLEN BASSETT,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for Writ of Certiorari to the Arizona Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

"*Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18." *Jones v. Mississippi*, 593 U.S. 98, 118 (2021); *Miller v. Alabama*, 567 U.S. 460 (2012). "[A] discretionary sentencing procedure," however, "suffices to ensure individualized consideration of a defendant's youth[.]" *Jones*, 593 U.S. at 118.

In sentencing Bassett for two murder convictions, Bassett's sentencer made an individualized choice between two non-capital sentencing options. Due to a widespread mistaken belief that one option included parole-eligibility, his sentencer expressly considered whether parole-eligible sentences were appropriate. For one murder, the sentencer imposed a sentence of "life with the possibility of parole after 25 years." And under Arizona law, the parole-eligibility ordered in that sentence is enforceable. For the other murder, Bassett's sentencer rejected his pleas for parole-eligibility and imposed a natural life sentence. Consequently, the Arizona Supreme Court found that his natural life sentence was not mandatory "within the meaning of *Miller*."

The question presented is:

Whether *Miller* permits a juvenile to be sentenced to a parole-ineligible natural life sentence when (1) a state has multiple non-capital penalties in place at the time of sentencing, (2) judges and attorneys at the time of sentencing are operating under the widespread mistaken belief that one of those penalties carries the

possibility of parole, (3) the defense presents mitigation and argument about whether a parole-eligible sentence should be imposed and the sentencer considers whether to impose a parole-eligible sentence, and (4) subsequent changes in Arizona law make enforceable any parole-eligible sentence imposed.

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INTRODUCTION

Bassett received a life-without-parole sentence, not because Arizona law dictated such a sentence, but because his sentencer, after taking his youth into account, found that a natural life sentence was the most appropriate sentence for the murder in question.

Consistent with *Miller*'s requirements, Bassett's sentencer conducted an individualized sentencing that took into account Bassett's youth and attendant characteristics, his counsel's arguments that he might change as he matured, his specific background and history, the testimony of his family and a friend, and the specific facts of his crimes before imposing a natural life sentence for one of the murders. Indeed, the entire sentencing hearing was about whether Bassett should receive parole-eligible or natural life sentences. Unlike in *Miller*, the court did not automatically impose Bassett's natural life sentence. Instead, the court made a meaningful choice between two sentences while considering Bassett's youth and attendant characteristics.

Bassett's petition fatally ignores a critical reality—his sentencer believed a parole-eligible option was available and imposed a parole-eligible sentence for one of the two murders. Moreover, that parole-eligible sentence is enforceable under Arizona law. For the second murder (now at issue here), Bassett's sentencer explicitly considered and rejected parole-eligibility.

To be sure, Arizona law did not provide a parole-eligible option at the time of Bassett's sentencing in 2006. But Bassett's sentencer and countless others operated under a widespread misunderstanding of

Arizona law, and thus wrongly believed that the *release*-eligible sentencing option in Arizona law included *parole*-eligibility. Bassett and many other juveniles (and adults, for that matter) were thus sentenced to parole-eligible sentences that were not legally available at the time, but which subsequent developments in Arizona law have made clear are completely enforceable.

The record here makes clear that Bassett received a natural life sentence only after his sentencer considered his age and attendant characteristics and found that a parole-eligible sentence was inappropriate for *this* murder. And had his sentencer chosen the lesser sentence, he would presently be serving two parole-eligible sentences rather than just one.

The defendants in *Miller* came to this Court seeking a new sentencing proceeding in which their sentencers could consider whether parole-eligibility was appropriate and, if they concluded it was, could impose a parole-eligible sentence that would actually grant parole-eligibility. Bassett, in stark contrast, already received exactly what the *Miller* defendants sought. Any resentencing here would be functionally identical to the first sentencing. Nothing in *Miller*, *Montgomery*, or *Jones* requires that absurd result.

STATEMENT OF THE CASE

A. Arizona Statutory Law.

In 2006, when Bassett was sentenced, Arizona's first-degree murder statute provided two sentencing options for juveniles convicted of first-degree murder: (1) natural life, meaning that "the defendant 'is not

eligible for . . . release[ ] on any basis,'" or (2) "life without eligibility for 'release[ ] on any basis until the completion of the service of twenty-five calendar years[.]'" Pet. App. 11a (quoting Ariz. Rev. Stat. § 13–703(A) (2003)).[1]

As for the types of "release" available to those who received a release-eligible sentence, Arizona "eliminated parole for all offenses committed on or after January 1, 1994." *Id.* Thus, the only available type of "release" under the statute was executive clemency. *Id.*

However, due to a widespread mistaken belief among Arizona judges and attorneys that the release-eligible option included parole eligibility, Arizona judges continued to impose sentences providing for parole-eligibility despite its unavailability under Arizona's statutes.

The mistaken belief appears to have been universal. During the period in which parole was not available, the Arizona Supreme Court repeatedly declared that parole was available. *See, e.g.*, *State v. Wagner*, 982 P.2d 270, 273 ¶ 11 (Ariz. 1999) ("Arizona's statute . . . states with clarity that the punishment for committing first degree murder is either death, natural life, or *life in prison with the possibility of parole*.") (emphasis added); *State v. Fell*, 115 P.3d 594, 597–98 ¶¶ 11, 14–15 (Ariz. 2005) ("[W]e today confirm" the accuracy of an earlier statement in 2001 that the statute included "*life imprisonment with*

[1] Death was listed as a third statutory option at the time Bassett committed the murders in 2004, but it was eliminated for juvenile offenders by *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

the possibility of parole or imprisonment for 'natural life' without the possibility of release.") (emphasis added). Bassett was sentenced approximately six months after *Fell*.

Indeed, "[t]he Arizona reporter is full of cases in which the sentencing judge mistakenly thought that he or she had discretion to allow parole . . . . '[P]rosecutors continued to offer parole in plea agreements, and judges continued to accept such agreements and impose sentences of life with the possibility of parole.'" *Jessup v. Shinn*, 31 F.4th 1262, 1268 n.1 (9th Cir. 2022) (internal citation omitted), *cert. denied sub nom. Jessup v. Thornell*, 143 S. Ct. 1755 (2023); *see also* Katherine Puzauskas & Kevin Morrow, *No Indeterminate Sentencing Without Parole*, 44 Ohio N.U. L. Rev. 263, 288 (2018) ("[S]ince 1994 the Arizona judiciary has sentenced more than two hundred defendants to life imprisonment with a possibility of parole[.]").

And just last week, the Arizona Supreme Court again reiterated that there was "pervasive confusion by both bench and bar about parole availability after it was abolished in Arizona[.]" *State v. Anderson*, No. CR–23–0008–PR, 2024 WL 1922175, at *1 ¶ 2 (Ariz. May 2, 2024); *see also id.* at *3 ¶ 17 ("Appellate courts, including this Court, published decisions as late as 2013 indicating parole was still available for those convicted of felonies with the possibility of release after twenty-five years.").

In 2014, Arizona's legislature passed a statute granting parole eligibility to juvenile offenders who received the release-eligible option: "Notwithstanding any other law, a person who is sentenced to life

imprisonment with the possibility of release after serving a minimum number of calendar years for an offense that was committed before the person attained eighteen years of age *is eligible for parole* on completion of service of the minimum sentence, *regardless of whether the offense was committed on or after January 1, 1994*." Ariz. Rev. Stat. § 13–716 (emphasis added). The change applied to juveniles sentenced between 1994 and 2014.[2] *Id.*

B. Factual Background.

1. The murders.

In 2004, Frances Tapia was driving a car while her boyfriend, Joseph Pedroza, sat next to her in the front passenger seat. Pet. App. at 4a, 7a. They stopped to pick up Pedroza's purported friend, Bassett. *Id.* Bassett was carrying a shotgun and extra ammunition; he sat directly behind Pedroza. *Id.* at 4a, 9a.

As Tapia drove, Bassett pulled out the shotgun and fatally shot Pedroza in the head. *Id.* at 4a. Having just witnessed her boyfriend's head nearly blown off, Tapia started screaming. *Id.* at 7a–8a. Bassett then turned to her. *Id.* at 4a. As she tried to "ward off" his next blast, he shot her in the shoulder. *Id.* at 4a, 7a. It did not kill her. *Id.* at 7a–8a. Bassett fired again, this time fatally wounding Tapia. *Id.* at 7a. He later

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[2] Arizona also enforces parole-eligible sentences imposed on adult offenders when parole was unavailable. *See Chaparro v. Shinn*, 459 P.3d 50, 55 ¶ 23 (Ariz. 2020) (enforcing such sentences imposed after a trial); *see also* Ariz. Rev. Stat. § 13–718 (enforcing such sentences imposed pursuant to a plea agreement).

explained that he fired the second shot at "that girl" because he thought the first shot missed her. *Id.*

The vehicle Tapia was driving crashed into a pole. *Id.* at 4a. The other back passenger of the vehicle, Chad Colyer, had jumped out of the moving vehicle when Bassett started shooting.[3] Bassett left the area but returned to retrieve the shotgun. *Id.* Officers apprehended him the next day. *Id.*

Bassett was sixteen years old when he murdered Tapia and Pedroza. *Id.* at 3a. He acted alone. *Id.* at 5a.

2. Trial and sentencing proceedings.

A jury convicted Bassett of two counts of first-degree murder. *Id.* at 3a.

Bassett's sentences were not automatically imposed. Instead, the parties submitted detailed sentencing memoranda arguing in favor of parole-eligible sentences (Bassett) or natural life sentences (the State). Arizona Supreme Court Docket Entry 1 (hereinafter "D.") at 84–178. They also submitted twenty-eight letters from Bassett's and the victims' friends and family arguing in favor of their respective positions. *Id.* at 75–81, 111, 135–40, 144–51, 171–78. The Adult Probation Department prepared a presentence report stating that parole-eligible sentences were available but advocating for natural life sentences. *Id.* at 63–66. Tapia's mother also

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[3] *See* State's Answering Brief, 2006 WL 5426995, at *5 (summarizing trial evidence for Bassett's direct appeal, *State v. Bassett*, 161 P.3d 1264 (Ariz. Ct. App. 2007)).

submitted her own sentencing memorandum advocating for natural life sentences. *Id.* at 164–78.

At the sentencing hearing, the court heard detailed information about Bassett, argument regarding the two sentencing options from the parties, and statements from several victims' family members, Bassett's adoptive father, his girlfriend, and Bassett himself. Resp. App. at 1a–38a.

The sentencing proceeding focused on the court's choice between the two sentencing options. *Id.*; Pet. App. at 4a–11a. The State's sentencing memorandum argued that "life without the possibility of parole for 25 years" was inappropriate. Resp. App. at 53a; *see also* Pet. App. at 4a. The State acknowledged that Bassett's age at the time of the murder was a mitigating factor; however, it urged the court to also consider that he was extremely intelligent. Pet. App. at 4a–5a. Regarding his maturity, the State argued that he had been a full-time student who worked during the summer and was mature enough to handle his money. *Id.* at 5a. The State also noted that it was unaware of anyone describing him as immature or impulsive. *Id.* The State pointed out that Bassett acted alone, had "a reputation for carrying a gun, and was nicknamed 'Little Scrapper' for fighting." *Id.* He also had three prior juvenile court referrals. *Id.*

Bassett's sentencing memorandum argued that parole-eligible sentences were appropriate for both murders. Resp. App. at 50a. He pointed out that his age was a mitigating factor, stating that it "is common knowledge that 16 year olds do not possess the judgment and impulse control of an adult." Pet. App. at 6a. Presciently, Bassett's memorandum included

three lengthy block-text quotations from *Roper v. Simmons*, 543 U.S. 551 (2005), discussing the many ways in which children are constitutionally different from adults. Resp. App. at 46a–49a (quoting *Roper*, 543 U.S. at 569–70). These points later formed the "starting premise" of *Miller*. *Montgomery v. Louisiana*, 577 U.S. 190, 206–07 (2016); *see also Miller*, 567 U.S at 483 ("[O]ur decision flows straightforwardly from our precedents: specifically, the principle of *Roper*, *Graham*, and our individualized sentencing cases that youth matters for purposes of meting out the law's most serious punishments.").

Bassett also argued that his childhood and dysfunctional family had decreased his capacity to conform his conduct to the requirements of the law. Resp. App. at 40a–41a, 49a. Specifically, his father had kidnapped him shortly before his second birthday. *Id.* at 41a. Bassett's mother did not want him and had abandoned him to be raised by another family. *Id.* at 40a. She had, however, retained custody of her other son. *Id.* Bassett submitted detailed records of his father's arrest and charges for the abduction. D. at 95–109. He also submitted his own psychiatric evaluations suggesting that he had been exposed to violence and abuse at the hands of his father. *Id.* at 87, 122–26. Bassett argued that despite his rocky start in life, he developed a reputation as "an ethical, hard worker" and had made attempts at self-improvement while incarcerated. Resp. App. at 41a–42a.

Bassett's sentencing memorandum also revealed that he had been diagnosed with and prescribed

medication for post-traumatic stress disorder. *Id.* at 42a; Pet. App. at 5a–6a. He included psychiatric evaluations. Pet. App. at 5a–6a; D. at 86, 122–26. Bassett argued that this condition, which led to hypervigilance and an exaggerated startle response to stressful situations, "may well have led [him] to severely overreact to events on the night of the shootings." Resp. App. at 42a; Pet. App. at 6a.

Bassett further argued that he had prospects for rehabilitation based on several letters of support and his attempts at self-improvement while incarcerated. Resp. App. at 49a. His memorandum also argued that the remorse Bassett would express at the sentencing hearing should mitigate his sentences. *Id.* at 50a.

At the sentencing hearing, the State argued that Tapia's murder was especially cruel because she endured mental and physical anguish as she watched Bassett kill her boyfriend and then attempted to ward off the shots that killed her.[4] Resp. App. at 15a–16a; Pet. App. at 7a. The State also argued that several other aggravating factors justified natural life sentences. Resp. App. at 15a–19a; Pet. App. at 7a.

Speaking on behalf of Bassett, Bassett's adoptive father stated that Bassett "was a sixteen-year-old kid preyed upon by Pedroza." Pet. App. at 7a; Resp. App. at 20a–23a. Bassett's girlfriend urged that "the biggest thing" the court should consider was "his age." Resp. App. at 24a.

Defense counsel argued that parole-eligible sentences were appropriate and emphasized that

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[4] Tapia was "splattered with [Pedroza's] brain matter" when Bassett shot him. Resp. App. at 16a.

Bassett had been "a child" of only sixteen years old at the time of the murders. *Id.* at 25a. He further argued that juveniles "are susceptible to negative influences" because their "characters are not fully formed." *Id.* at 28a. He also noted that the Supreme Court eliminated the death penalty for juveniles in part due to "numerous scientific studies that have been done recently that establish that portions of the brain that control impulsivity and foresight and appreciation of consequences don't really form fully until the early 20's[.]" *Id.* at 25a. He (again) quoted *Roper*: "[T]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Id.* at 28a (quoting 543 U.S. at 570). He also argued that Bassett had the "poor impulse control" typical of those his age and that his impulsivity "may [] have been compounded" by his PTSD diagnosis. *Id.* at 27a.

While weighing aggravation and mitigation, the trial court noted that it had considered the following aggravating factors: (1) the "substantial" emotional harm of the surviving family members, (2) the "physical cruelty imposed" on Tapia because she was conscious and reacted to the first shot before she was killed, (3) her serious physical injury, (4) Bassett's use of a deadly weapon, (5) the fact that there were two homicides, (6) Bassett's previous delinquent behavior, (7) the "grave risk of death to Colyer," and (8) the fact that "Bassett brought extra ammunition into the car as evidence of intent and the danger his conduct presents to the public." Pet. App. at 8a–9a; Resp. App. at 34a–35a.

Regarding mitigation, the trial court gave Bassett's age "considerable weight" because he was only sixteen at the time of the murders; however, the court tempered this weight because of his "obvious intelligence" and the fact that he had been able to "do very well with employment." Resp. App. at 35a. The court also considered Bassett's prior contacts with the juvenile justice system "as a factor in [his] level of maturity" because they gave him "the opportunity to seek help" and "address any issues that were present as a result of any mental health conditions." *Id.* The court noted, however, that Bassett had failed to take advantage of these opportunities. *Id.* The court considered Bassett's PTSD diagnosis and the fact that it had been "manageable with medication" until Bassett stopped taking it. *Id.* The court gave "some weight" to the support of his family and friends and "minimal weight" to Bassett's accomplishments while incarcerated. *Id.* at 36a. The court also considered Bassett's statement of remorse. *Id.*

At no time during this extensive sentencing hearing did the court suggest that it was imposing either sentence automatically. *Id.* at 33a–36a. Instead, the court (in its own words) approached the matter "with an open mind," while "reflecting on the evidence presented at trial" and "carefully" reading all the written materials, including the letters, that were submitted. *Id.* at 34a, 36a. It further noted that there was "no presumptive sentence" for the murders. *Id.* at 36a.

Ultimately, for Pedroza's murder, the court imposed a sentence of "life with the possibility of parole after 25 years." *Id.* at 37a.

For Tapia's murder, the court imposed a natural life sentence. *Id.* at 36a. The court explained that the circumstances of Tapia's murder reflected additional dangerousness, which could not be addressed "with anything less than a natural life sentence." *Id.*

Bassett's convictions and sentences were affirmed on appeal. Pet. App. at 11a.

3. Postconviction proceedings.

The present matter arose from Bassett's third post-conviction proceeding. *Id.* at 12a. As relevant here, in 2017, he sought relief based on *Miller* "as expanded by *Montgomery*," arguing that his natural life sentence for Tapia's murder was unconstitutional because his sentencer failed to make a finding that he was permanently incorrigible. *Id.* at 12a–13a; D. at 262. He also argued that Arizona's sentencing scheme failed to provide him any meaningful opportunity for release at the time he was sentenced. D. at 262.

The superior court held that Bassett was sentenced "under a mandatory natural life sentencing scheme that *Miller* and *Jones* found to be unconstitutional" because the "law did not allow the sentencing judge to consider life with the possibility of parole as an alternative to a sentence of natural life." Pet. App. at 13a (cleaned up).

The State sought special action relief at the Arizona Court of Appeals and then the Arizona Supreme Court. *Id.* at 14a.

The Arizona Supreme Court granted review to determine whether Bassett's natural life sentence was "mandatory under *Miller*, in violation of the Eighth

Amendment[.]" *Id.* It also considered whether Bassett was entitled to an evidentiary hearing to attempt to establish that he was permanently incorrigible at the time of the murders. *Id.* at 3a, 24a.

The Arizona Supreme Court unanimously held that Bassett's natural life sentence was "not mandatory within the meaning of *Miller*" and that "he was not entitled to an evidentiary hearing." *Id.* at 3a.

The court observed that the state statutes at issue in *Miller* provided only a single sentencing option for juvenile homicide offenders. *Id.* at 3a, 21a. Thus, those trial courts had been "automatically precluded from considering whether youth and its attendant characteristics might justify a lesser sentence." *Id.* at 21a.

In "stark contrast" to the state statutes at issue in *Miller*, Arizona's sentencing scheme provided "two sentencing options." *Id.* at 21a–22a. Thus, Bassett's sentencer made "an affirmative choice between types of sentences for Bassett's murder convictions[.]" *Id.* at 31a. Moreover, his sentencer "genuinely, if mistakenly, thought that he was considering a sentence of life with the possibility of *parole*." *Id.* at 22a (emphasis in original). And "[r]egardless of whether parole was available at that time, Bassett would now be eligible for parole had the court imposed the lesser sentence" due to a subsequent statute. *Id.* (referencing Ariz. Rev. Stat. § 13–716). Thus, Bassett's sentencer was not required to sentence him to natural life, "as evidenced by its decision to sentence him to "life with the possibility of parole after 25 years" for Pedroza's murder. *Id.* at 23a. As a result, his "natural life sentence was not mandatory under *Miller*." *Id.*

REASONS FOR NOT GRANTING THE WRIT

I. Bassett received all that *Miller* demands.

Miller's requirements were satisfied because Bassett received an individualized sentencing hearing at which his youth and attendant characteristics were considered before his sentencer decided he should be sentenced to natural life without the possibility of parole for Tapia's murder. Although Bassett's sentencer was mistaken about the actual availability of parole, had it chosen the lesser sentence, as it did for Pedroza's murder, Bassett would now be eligible for parole, just as he is for the other murder.

A. *Miller* requires a discretionary sentencing process that allows for individualized sentencing and the consideration of youth and attendant circumstances.

Miller prohibits mandatory life-without-parole sentences for murders committed while the defendant is under 18. *Jones*, 593 U.S. at 103. Before sentencing a juvenile offender to a parole-ineligible sentence, *Miller* requires sentencers to conduct an individualized sentencing hearing at which they "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480.

The core problem with the mandatory sentencing schemes at issue in *Miller* was that they precluded sentencers "from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 476. "By making youth (and all that accompanies it) irrelevant to imposition of that

harshest prison sentence," mandatory sentencing schemes pose "too great a risk of disproportionate punishment." *Id.* at 479.

According to *Miller*, a mandatory sentencing scheme "precludes consideration of [a youth's] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477. It also "prevents taking into account the family and home environment" and "neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him." *Id.* "And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." *Id.* at 478. "Under these schemes, every juvenile will receive the *same* sentence as every other," regardless of their individual circumstances. *Id.* at 476–77 (emphasis added).

In the years following *Miller*, this Court crystallized its requirements. In *Montgomery*, this Court held that *Miller* was retroactive. 577 U.S. at 206. And in *Jones*, it held that "*Miller* mandated '*only* that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence." 593 U.S. at 98, 101, 106, 108 (emphasis added) (repeating this or a near-identical phrase three times) (quoting *Miller*, 567 U.S. at 476). Thus, *Jones* made clear that neither *Miller* nor *Montgomery* imposed a requirement that sentencers make a finding of permanent incorrigibility before imposing a natural life sentence (as the Arizona Supreme Court and

several other state courts had incorrectly held before *Jones*).[5] *Id.* at 118.

Jones emphasized several times that a discretionary *process* was most important:

- "*Miller* required a discretionary sentencing *procedure*." *Id.* at 110 (emphasis added).
- "*Miller* and *Montgomery* squarely rejected" the argument "that *Miller* requires more than just a discretionary sentencing *procedure*." *Id.* at 106 (emphasis added).
- "[A] discretionary sentencing *procedure* suffices to ensure individualized consideration of a defendant's youth[.]" *Id.* at 118 (emphasis added).
- "The Court's precedents require a discretionary sentencing *procedure* in a case of this kind." *Id.* at 120 (emphasis added).

There are several reasons a discretionary sentencing *process* might not occur. A state statute might allow for only a single sentencing option (as was the case for the two defendants in *Miller*). Or, perhaps, a sentencer might mistakenly believe that only a single option is available. Despite *Jones*'s statement that "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient," *id.* at 105, a trial court that mistakenly believes it must impose a natural life sentence might create a *Miller* violation even where a

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[5] *See* Pet. App. at 24a-25a (overruling *State v. Valencia*, 386 P.3d 392 (Ariz. 2016), which had previously authorized evidentiary hearings regarding "permanent incorrigibility").

discretionary *system* exists. Put differently, while *Jones*'s statement holds true in all but the rarest of circumstances, there is no reason to believe that it contemplates cases in which sentencers mistakenly misapply state law.

Thus, there is no reason to believe that *Jones* contemplated the unusual situation here—in which there is a "systemic failure to recognize the effect of the change in [state] law regarding parole," leading sentencers like Bassett's to impose (and appellate courts to uphold) parole-eligible sentences for nearly two decades. *Anderson*, 2024 WL 1922175, at *4 ¶ 25. In Bassett's case and countless others, Arizona judges engaged in the discretionary process of determining whether a parole-eligible sentence was appropriate. *See* Puzauskas, 44 Ohio N.U. L. Rev. 263, at 288 ("[S]ince 1994 the Arizona judiciary has sentenced more than two hundred defendants to life imprisonment with a possibility of parole[.]"). And any parole-eligible sentences imposed are given effect. *See supra* at 4–5 (citing Ariz. Rev. Stat. §§ 13–716, 13–718; *Chaparro*, 459 P.3d at 55 ¶ 23).

Nothing in *Jones* indicates that a *Miller* violation results from this unique constellation of facts.

B. Bassett's sentencer did exactly what *Miller* mandated: consider his youth and attendant characteristics before sentencing him to life in prison without the possibility of parole.

Bassett's sentencer followed the discretionary sentencing process required by *Miller*. The court considered Bassett's age to be a mitigating factor and

gave "considerable weight" to the fact that he was "16-and-one-half years old at the time of the crimes." Resp. App. at 35a; *see Miller*, 567 U.S. at 480. It also considered circumstances attendant to Bassett's youth, including his upbringing, family life, PTSD diagnosis at age 14, and opportunities to seek help and address issues as a juvenile. Resp. App. at 35a.

It took into account the fact that "juveniles are susceptible to negative influences," have "poor impulse control," and lack fully-formed characters. *Id.* at 27a, 28a. It also considered whether Bassett might be rehabilitated, as defense counsel argued. *Id.* at 46a, 49a–50a.

Bassett's sentencer also addressed the specific circumstances of the two murders, noting the differences between them and finding that one merited a parole-eligible sentence. *Id.* at 37a ("[T]he circumstances are different . . . because of the facts of the case and what happened in the car that day.").

Only after hearing the evidence and weighing the aggravating and mitigating factors did the court determine that a parole-eligible sentence was inappropriate for Tapia's murder. *Id.*

Bassett thus received the very individualized consideration of his youth and attendant circumstances that *Miller* demands. The resentencing he seeks would merely repeat the sentencing hearing he received years ago.

C. If Bassett's sentencer had selected the lesser sentence for Tapia's murder, Bassett would now be serving a parole-eligible sentence—just as he is for Pedroza's murder.

Bassett overlooks the above and claims that his sentence violated *Miller* because Arizona had a mandatory sentencing scheme just like the state schemes at issue in *Miller*. *See* Pet. at 15–18.

But unlike Bassett, the two *Miller* defendants received automatic life-without-parole sentences because their state statutory schemes provided only one option for juvenile homicide offenders. *See* 567 U.S. at 474 ("[T]he mandatory penalty schemes at issue here *prevent* the sentencer from taking account" of the characteristics of youth.) (emphasis added). *Miller* made a point of highlighting that the sentencers in question imposed the sentences automatically and by necessity. For example, the Arkansas sentencing judge noted "that 'in view of the verdict, there's only one possible punishment.'" *Id.* at 466 (brackets omitted); *see id.* at 469 (discussing the Alabama sentencing proceeding: "[A] jury found Miller guilty. He was therefore sentenced to life without the possibility of parole").

This is a far cry from the lengthy, individualized sentencing that Bassett received, where his sentencer explicitly focused throughout the proceedings on whether a parole-eligible sentence was appropriate. "Because of the pervasive confusion by both bench and bar about parole availability," significant efforts were expended in deciding between the two options. *Anderson*, 2024 WL 1922175, at *1 ¶ 2. Again,

Bassett's entire sentencing hearing concerned the choice between the two sentences. *See* Resp. App. at 2a–37a.

The harshest option was thus not imposed automatically, by default. Unlike the sentences at issue in *Miller*, the natural life sentence here was not the only available choice, as is evidenced by Bassett's parole-eligible sentence for Pedroza's murder. *Compare Miller*, 567 U.S. at 477 (under mandatory sentencing schemes "every juvenile will receive the same sentence as every other") *with* Resp. App. at 55a–61a (documenting 28 Arizona juvenile homicide offenders who received release-eligible sentences while parole was legally unavailable; many of their sentencers used the word "parole" at sentencing, and all 28 juveniles are now serving parole-eligible sentences due to Arizona's 2014 parole-implementation statute, Ariz. Rev. Stat. § 13–716).

In arguing that *Miller* was nonetheless violated here, Bassett argues that the sentencer's mistaken belief is irrelevant. Pet. at 17–23. According to Bassett, the statutorily available options at the time of sentencing are the beginning and end of the analysis. But while this may typically be the case, it cannot be that simple in the unusual circumstance where sentencing judges misunderstand the law. Surely Bassett would not contend, for example, that a sentencer imposing a natural life sentence under the mistaken belief that parole was *not* available would nonetheless comply with *Miller* because the relevant statutes provided a parole-eligible option.

Moreover, Arizona is not contending here that *Miller* would have been satisfied based on the

mistaken beliefs of judges and parties alone. If parole truly was illusory and forever remained unavailable, a *Miller* violation might result. But here, sentencing judges not only believed they were choosing between natural life and parole-eligible sentences, the juveniles who received parole-eligible sentences will all receive parole eligibility within 25 years by virtue of the 2014 legislative fix. *See* Ariz. Rev. Stat. § 13–716. The functional outcome is no different than if parole-eligibility had been on the books all along.

Additionally, it would make no sense to conclude that Arizona's sentencing scheme was "mandatory" as that term is used in *Miller* for some (those who received natural life sentences) and not for others (those who received parole-eligible sentences). If this Court were to conclude that the scheme was mandatory for Bassett's natural life sentence for Tapia's murder, it might likewise have to conclude the scheme was mandatory for his parole-eligible sentence for Pedroza's murder. Setting aside the question of prejudice for a moment, the Court could thus reach a nonsensical result by which a juvenile serving a parole-eligible sentence has a *Miller* claim.

Again, the scheme here produced a result where many juveniles—including Bassett—received release-eligible sentences that the sentencing judges believed were parole-eligible and that are, in the end, in fact parole-eligible. *See* Resp. App. at 55a–61a. No "mandatory" scheme could produce this result.

D. The Petition is based on a strawman.

The main theme of the Petition is that the Arizona Supreme Court "once again" mistakenly held that

clemency-eligibility is no different than parole-eligibility. Pet. at 4. Bassett then handily topples the strawman he set up because this Court's precedents clearly establish that, "[a]s a matter of law, parole and commutation are different concepts[.]" *Solem v. Helm*, 463 U.S. 277, 300 (1983); *see also Cruz v. Arizona*, 598 U.S. 17, 21–22 (2023); *Lynch v. Arizona*, 578 U.S. 613, 616 (2016).

But this is not what the Arizona Supreme Court actually held. It faced a paradox. If Bassett's natural life sentence was "mandatory," how did he receive—at the same sentencing hearing—a parole-eligible sentence for his other murder? To resolve this paradox, it relied on three critical facts to find that Bassett's natural life sentence was not mandatory "within the meaning of *Miller*." First, the sentencing statute had multiple non-capital penalties. Pet. at 21a–22a. Next, Bassett's sentencer actually considered whether he should be parole-eligible for Tapia's murder and imposed what it believed was a parole-eligible sentence for Pedroza's murder. *Id.* at 22a. Finally, Bassett is actually parole-eligible for the other murder due to the subsequent statute that effectuated parole-eligibility. *Id.*

The Petition wrenches the first fact from this context and suggests that the Arizona Supreme Court relied on it alone to find *Miller*-compliance, "conflat[ing] the availability of parole with the availability of executive clemency[.]" *See* Pet. at 3, 21–22.

But Arizona is *not* arguing that the mere existence of its two sentencing options saves it from a *Miller* violation. Neither option allowed for parole-eligibility,

and clemency-eligibility alone would have been insufficient. *See Solem*, 463 U.S. 277; *Cruz*, 598 U.S. 17; *Lynch*, 578 U.S. 613. But for the sentencer's actual consideration of parole-eligibility and the subsequent statute effectuating this sentence, there would be a *Miller* violation. It is the combination of all three factors—not just the first one—that renders Bassett's natural life sentence *Miller*-compliant.

Bassett also suggests that certain statements in amicus briefs filed prior to the *Miller* decision are evidence of "gamesmanship" on Arizona's part. *See* Pet. at 8, 18, 35. However, prior to the *Miller* decision, it would have been impossible for anyone to say what "mandatory for *Miller* purposes" meant.

Bassett further contends that *Miller*'s 2012 inclusion of Arizona in a list of "29 jurisdictions mandating life without parole" is dispositive. *See* Pet. at 2, 6, 14, 16, 18. However, *Miller*'s analysis of Arizona's statutes in 2012 could not have accounted for the 2014 statute effectuating parole-eligibility. Nor did it account for the "pervasive confusion . . . about parole availability after it was abolished in Arizona." *Anderson*, 2024 WL 1922175, at *1 ¶ 2. Both were critical to the Arizona Supreme Court's analysis. *See* Pet. App. at 22a. When combined with the discretionary process followed by Bassett's sentencer, these factors rendered Bassett's natural life sentence *Miller*-compliant.

Bassett also suggests that "'the only 'release' available under Arizona law is executive clemency, not parole.'" Pet. at 8, 17 (quoting *Cruz*, 598 U.S. at 23). But this simply ignores Ariz. Rev. Stat. § 13–716, which provides that a juvenile offender sentenced to a

release-eligible sentence "is eligible for parole," regardless of whether the offense was committed on or after January 1, 1994.

This constellation of facts, coupled with close review of Bassett's sentencing hearing, reveals that any resentencing this Court could order would be functionally identical to the one he already received. Perhaps recognizing this, Bassett encourages this Court to take a blinkered approach and ignore critical realities present here. This Court should decline that invitation and deny review. Bassett already received precisely the type of hearing that *Miller* demands.

II. There is no conflict with other state high courts.

As the above discussion demonstrates, application of *Miller* and its progeny to sentences imposed in Arizona is unique. The misunderstanding of law that led many Arizona judges to impose parole-eligible sentences that were not at the time authorized by statute is obviously unlikely to find many parallels in other states.

Here, Bassett cites several cases from outside Arizona, asserting a conflict. But most of the decisions stand only for the proposition that clemency-eligibility alone is insufficient because parole-eligibility is constitutionally required. This Court's precedents have already firmly established this fact, and Arizona does not disagree. *See Solem*, 463 U.S. 277; *Cruz*, 598 U.S. 17; *Lynch*, 578 U.S. 613.

Mississippi: Bassett is mistaken when he suggests that *Parker v. State* analyzed two sentencing options. Pet. at 27. Parker was convicted of "murder," not

"capital murder." *Parker v. State*, 119 So. 3d 987, 997 (Miss. 2013). Thus, "imprisonment for life" was "the only sentence available." *Id.* at 998. There was no discretionary process when he was sentenced and no opportunity for him to present mitigation. *Id.* His sentencer did not consider whether he should be parole-eligible. *Id.* at 996. Nor did the Mississippi legislature later make his sentence parole-eligible.

Nebraska: Likewise, in Nebraska, only a single punishment was available. *State v. Castaneda*, 842 N.W.2d 740, 762 (Neb. 2014) ("At the time Castaneda was sentenced, the only possible sentence for a first degree murder committed by a juvenile was life imprisonment."). Castaneda's sentencer was not mistaken about whether parole was available, and Castaneda's sentencer did not engage in a discretionary process of considering whether parole-eligibility was appropriate. Nor did the Nebraska legislature later make his sentence parole-eligible.

North Carolina: Likewise, in North Carolina, only a single sentence was available—"life imprisonment without the possibility of parole." *State v. Young*, 794 S.E.2d 274, 275 (N.C. 2016). The North Carolina Supreme Court found that a review process that would have required clemency to obtain release was insufficient to comply with *Miller*. *Id.* at 279–80. Young's sentencer was not mistaken about the availability of a parole-eligible sentence and did not engage in a discretionary sentencing process.

Iowa: Likewise, in Iowa, only a single sentence was available. *State v. Ragland*, 836 N.W.2d 107, 118–19 (Iowa 2013) ("The only sentence" for first-degree murder was commitment to the department of

corrections "for the rest of the defendant's life"). No individualized sentencing or discretionary sentencing process had taken place. Ragland's sentencer was not mistaken about the availability of parole.

In 2011, the state legislature passed a statute requiring juveniles be eligible for parole after 25 years. *Id.* at 113 n.3. Attempting "to avoid *Miller*'s application" (and apparently, this statute), the governor "commuted" Ragland's sentence to life with parole-eligibility after 60 years. *Id.* at 111–12, 117. The Iowa Supreme Court found that the original sentence did not comply with *Miller* because Ragland did not receive an individualized sentencing hearing; it further found that the commuted sentence failed to comply with *Miller* because it was functionally equivalent to life without parole. *Id.* at 121–22. In passing, it noted that the possibility that the original sentence could be commuted (which in fact happened) did not make it any less mandatory. *Id.* at 119–20.

<u>Wyoming</u>: Unlike the previous four states, Wyoming had two non-capital sentences available at the time of sentencing: "life imprisonment without parole or life imprisonment 'according to law[.]'" *Bear Cloud v. State*, 294 P.3d 36, 44 ¶ 31 (Wyo. 2013). Other statutes made parole unavailable for either option. *Id.* at 45 ¶ 32. Because commutation provided the only means for release for either sentence, the Wyoming Supreme Court found that the statutes prohibiting parole were unconstitutional as applied to the "life sentence according to the law" option. *Id.* at 46 ¶ 38.

Although Wyoming's statutory system was closer to Arizona's (in that it provided two sentencing options), its sentencers were not mistaken about the

availability of parole, and they did not specifically consider whether parole-eligibility was appropriate at sentencing. Wyoming sentencers thus did not conduct "individualized sentencing[s]" or consider "the individual, the factors of youth, and the nature of the homicide in determining whether to order a sentence that includes the possibility of parole." *Id.* at 47 ¶ 44.

In short, none of the States identified by Bassett had the constellation of facts present in Arizona: (1) multiple non-capital penalties in place at the time of sentencing, (2) "pervasive confusion about parole" among judges and attorneys based on "a systemic failure to recognize" that it was not available, and (3) subsequent enactment of a statute that authorized parole for a sentence that had previously been only clemency-eligible. *Anderson*, 2024 WL 1922175, at *4 ¶¶ 25, 26. Thus, there is no conflict in need of this Court's resolution. Arizona alone was so mistaken about its own sentencing statutes that it fortuitously complied with *Miller*.

CONCLUSION

The petition for writ of certiorari should be denied.

May 8, 2024 Respectfully submitted,

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APPENDIX

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APPENDIX 1

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

1 CA-CR 06-0088

Maricopa County
Superior Court No.
CR 2004-005097-001

[Dated January 27, 2006]

STATE OF ARIZONA,)
Plaintiff,)
)
Vs.)
)
LONNY BASSETT,)
Defendant.)
)

Phoenix, Arizona
January 27, 2006

BEFORE: THE HONORABLE
BRIAN R. HAUSER, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Sentencing)

ORIGINAL
PREPARED FOR APPEAL

Prepared by:
Melody O'Donnell
Certified Reporter #50209

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A P P E A R A N C E S

FOR THE PLAINTIFF:
Jeannette R. Gallagher
Deputy County Attorney

FOR THE DEFENDANT:
John Canby
John Ronan Curry
Office of the Legal Defender

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(The following proceedings took place in open court:)

THE COURT: State of Arizona vs. Lonny Bassett, CR 2004-005097-001.

MS. GALLAGHER: Jeannette Gallagher appearing on behalf of the State.

MR. CANBY: Good morning, your Honor. John Canby and John Curry on behalf of Mr. Bassett, who is present in custody and ready for sentencing.

THE COURT: Deputy, why don't you have Mr. Bassett come and sit at counsel table with Mr. Canby, please.

All right. Your name is Lonny Bassett?

THE DEFENDANT: Yes, sir.

THE COURT: What is your date of birth, please?

THE DEFENDANT: [redacted]-87.

THE COURT: In previous proceedings a determination was made that you're guilty of two counts of first degree murder. Based on those determinations, it's the judgment of the Court that you're guilty of those two crimes, both dangerous, nonrepetitive Class 1 felonies committed on or about June 16th, 2004.

I've read the presentence report, the attachments. I've read the memoranda filed by the prosecutor, your attorneys, and also one that was

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submitted today from the Crime Victims Legal Assistance Project. I've also ready letters that were attached to the presentence report.

You've been in custody 588 days as of today: is that correct?

THE DEFENDANT: Sounds right, sir, yes.

THE COURT: Ms. Gallagher, would you like to proceed?

MS. GALLAGHER: Yes, judge. There are several family members from both sides that wish to speak.

And I would ask Rachel -- this is Joseph's mother, your Honor.

THE COURT: All right. Ma'am, would you come up to the podium, please.

Would you state your name, please.

MS. MEDRANO: My name is Rachel Medrano, formerly Pedroza.

THE COURT: Yes, ma'am.

MS. MEDRANO: I wrote down a few things here that I would like to say.

Joseph Pedroza was my youngest son. Joseph did not know he was going to be murdered in cold blood by Lonny Bassett on the early morning of June 16th, 2004.

I will never forget that morning. Some detectives came to our house to tell us the bad news. My

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son Joseph had been murdered. He had been shot in the back of the head.

On that dreadful morning my daughter, Ruth Stevens, answered the knock on the front door. After the detectives told her about Joseph's death, she came and knocked on my bedroom door. When I answered, she said. "Mom, I don't know how to tell you this. But you have to know. It's about Joe. The police just came to let us know that Joe had been murdered."

I could not believe what she was telling me. It sounded like a nightmare. No, not my Joe. That can't be true. He can't be dead. Immediately, I went into shock.

Lonny, if you were really afraid of Joe, you would not have called him to give you a ride somewhere. You would have not wanted to be around Joe. That does not make sense.

Why did you have to kill my son that I love so much? A precious little boy was left without his daddy that he loves so much.

Frances was an innocent victim, too. Two sweet little girls were left without their mother. That's not fair. A human life is precious and priceless.

Joe was a loving son. He had a gentle manner, a gentle manner about him that was special. I will always remember how he was. He will always be in my heart and

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thoughts. I feel like a part of me is gone. My life will be forever changed without my Joe -- without my Joseph.

THE COURT: Thank you, ma'am.

MS. GALLAGHER: Your Honor, Joseph's sister, Ruth Stevens.

THE COURT: Yes, ma'am. Would you state your name, please.

MS. STEVENS: My name is Ruth Stevens.

THE COURT: Thank you.

MS. STEVENS: I'm sorry. It's kind of hard to prepare for something like this.

But first of all, I want to say that Joseph Medrano Pedroza was my baby brother. And if you knew him, he was rarely without a smile. He was a very friendly person. And he had endless amounts of friends, as well as the family of Frances Tapia. And they were very

close, because Joseph grew up around their family because we lived in that area. So he knew Frances her whole life, even though their relationship didn't bloom until toward the end.

I just had a few things I wanted to say. First of all, what you did, Lonny, was so very wrong and has left me in shock since the first day. And you have no idea the pain you have caused both families, and the financial strain and burdens that it caused for all of us.

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And at the time this happened, I had a four-month-old baby as well as my other children, and have since carried another child during all this ugliness, and you can't even know how hard that's been for me.

But I want you to know that I believe that your sentence is what you deserve, because I believe you caused a clear-cut premeditated murder on both of them. It seems as though you planned it every step of the way, except for the fact you didn't think of your own safety the way that you did it.

And little Joey, Jr. spends much time in my home with his grandmother and I. And he cries and he asks for his father, and he doesn't understand why you had to kill him. And as a little boy who is barely seven now, many times he says he wants to die.

I bet you never thought about the children. And I just -- I want everybody to know that they should never forget the three smallest victims in all of this, and that is little Joseph Pedroza, which is Joseph's son, little Nina and Athena, Frances' daughters.

And I just have to say that I just think you should pay for what you did. And you had many other opportunities. You had different ways to handle the situation.

And I just -- I can't believe it. Like I said,

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I'm still in shock. It's so horrific. I can't believe how you sit there smiling, as if you've got something to smile about. It really is disgusting. That's all I have to say.

THE COURT: Thank you, ma'am.

MS. GALLAGHER: Your Honor, Gabriel Pedroza, Joseph's brother.

THE COURT: Your name, please.

MR. PEDROZA: Gabriel Medrano Pedroza.

The purpose for me being here is to express how I feel deep down inside. Joseph was not only my younger brother, but he was, as it were, my son, as I raised and I helped financially with his raising.

And it tears me inside to know that Lonny Bassett does not have any remorse in his heart for what he's done, that he's destroyed multiple families. And I just -- I hope to God and pray that every day of his life he remembers the two individuals that he took that did not deserve the cruelty that he showed to them, and that that same cruelty he will suffer, suffer that deep feeling and emotion.

I had to leave Arizona after that year, because it was just an emotional strain for me. I couldn't deal

with everything on a day-to-day basis. I had to leave this state, and I was gone for a couple of months.

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Emotionally, I couldn't handle it, because I just wanted -- I was so angry. I wanted Lonny to pay the same price that he did.

And I just hope that he looks in the mirror at himself. And he thinks he's so happy with what he's done, but in essence it was cruel -- like they say, cruel and unusual punishment. It's something he did with his own hand, and he deserves what he is receiving, because that's the seed that he sowed.

And that's all I have to say.

THE COURT: Thank you, sir.

MS. GALLAGHER: Your Honor, Virginia is Frances Tapia's aunt.

THE COURT: Your name, please.

MS. VIRGINIA TRUMBULL: Virginia Trumbull.

I don't think Lonny Bassett realizes the impact that it's done. The two little girls that he left behind are separated because their mom is dead. So not only have they lost their mom, but now they are separated as well because of his inhumane act.

And for what he has done there is no true punishment. For life is a wonderful thing that we all need to cherish, and he took two of those away, and he destroyed many of those around them, too. And I don't think that even life in prison and consecutive life in

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prison would ever do the job.

And for him to sit, like everybody else has said, and just smirk upon everybody else and think it's just a joke and a fun thing.

And, you know what? He still has his parents that he gets to go and talk to and, you know, maybe put the hands up to the window and pretend they are touching.

But guess what? The little girls never get to touch mommy's hands again. And the eight-year-old, on medication because she can't sleep. Has nightmares all the time. On medication. She begs me every night before she goes to sleep, "Please never leave my side."

The last thing her mom got to say to her before she walked out that door that night, "Make sure you take care of your sister. I love you. See you in the morning."

Morning never came. Therefore, the baby doesn't want to go to sleep, because morning never comes.

I don't think, unless he was that child, he will ever realize. And the parents won't realize, because they still have their child.

There is no punishment great enough for the crime he has committed, and I just need him to know and understand what those two little girls are going through, because they are also separated, but they don't have their

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mom that they get to look at every day and they don't get to touch and talk to.

And what I would give to have those little girls come in here and look you in the eye and tell you, you took their mom. You took their mommy, a 22-year-old beautiful young lady that had nothing to do with whatever anger you had with Joseph, just because she was sitting in the car next to him.

And you, thinking you're so afraid. What were you afraid of? A little 100 pound little girl, you know, that's driving a car? What were you afraid of that you had to shoot her, too? You already ruined one family's live and then you had to ruin two. Not only that family, but her kids and everybody else involved?

THE COURT: Ms. Trumbull, you need to direct your comments to me, please.

MS. VIRGINIA TRUMBULL: Well, it's just sad because he doesn't get to see and look at anybody and all the pain we suffered, judge. And it's terrible because he thinks it's a joke and so does his family.

It has ruined, because this little Frances was the glue to this family. You know, like every puzzle has its little piece. Well, she was that centerpiece that held everything together. And without her it has totally ruined everybody's family and ours.

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And that's all I have to say.

THE COURT: Thank you. ma'am.

MS. GALLAGHER: Your Honor, Frances' mom, Trina Trumbull.

THE COURT: Yes.

MS. TRINA TRUMBULL: Your Honor, my daughter, Frances Tapia Trumbull, was my best friend. She was an amazing human being. People were drawn to her because of her loving, happy and compassionate personality. Her laugh was infectious, he smile was amazing, and she warmed the hearts of everyone who met her. Whenever her sister or brother needed anything, she was always ready to help them.

Frances loved life and had goals and dreams for her future. She wanted to complete college and eventually land a career in the criminal justice field.

She made every holiday special for everyone. For example, every December 31st she would be either calling or be there knocking on my door to wish me a Happy New Year, and every Valentine's Day and birthday she'd make her rounds, taking chocolate covered apples to everybody on Valentine's Day. That's my brother, my sister, my mom, everybody. Either that or she would bake cookies or a cake and she took them to my work.

Growing up, Frances was always the leader in her

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class. She had so many friends. Frances was looked up to by her classmates and respected by her teachers. She was a good student and a good friend to others.

Frances grew into a wonderful woman and a devoted mother. She was a caring mom and her children adored her. She spent lots of time with her daughters taking them places and doing things with them. Her youngest daughter always followed her around like her shadow and was especially close to her.

Frances' murder has shattered our lives. My daughters and son have not only lost a wonderful sister, but a mentor on whom they had come to rely for help in their own lives. Her murder leaves a void in their lives that will not be filled.

They relied on her in emergencies. During the rough spots in their own lives she was always there to help them through. This loss has result in significant emotional stress for my children. My son, Ricky, and daughter, Trina, ended up losing a year in high school.

As a single mom, I relied heavily on Frances' help with our family. For me her murder also leaves a void that will never be filled. This is a loss and a hurt and a pain that will never go away.

We were always there for each other, and our bond was strong in good times and in bad. If I needed her to

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enroll my other children in school, she would do so without hesitation. She would help me take them to and from the dentist and doctor and pick up the slack when I really needed the help. I trusted her.

Many times on my lunch hour when Frances would be picking up her daughter from school, we would meet

to share a part of our day together. We treasured those times with each other, and now they are forever gone. The hole in my heart can never be repaired or filled.

Whenever Frances was angry, I could tell in her voice. She would call me "Mother." When she was happy, it was always "Mama."

How I long to hear her voice. I will never be able to speak or feel or hear my daughter Frances again. That is what Lonny Bassett has taken from me, and I will live with the consequences of his terrible crime every day of my life, and so will my children and Frances' children as well as my sister and my nieces and my brothers.

Her two little innocent girls will now have to grow up without their mother. When they ask where their mom is, painful memories resurface. My oldest granddaughter wakes up crying in the middle of the night for her mommy. My youngest granddaughter misses her mommy and longs for her to come home. We have had to work hard to help shield Frances' little girls of bloody details of

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how and why their mommy is gone.

Frances used to volunteer with me to feed the homeless. The time we spent volunteering together was very special. We both really enjoyed reaching out to others who are in need. The whole community has suffered a great loss because of what Frances gave to that community.

Her daughters will never be able to show their mom their T-ball trophy. Her girls will never be able to show their forms from martial arts or share anything with their mom at all. Anything and everything that they learn or do, they now tell their mom through a cold headstone instead of within Frances' loving arms.

Witnessing this is a heart-wrenching experience. What do you say to two little girls who do not understand why their mommy was taken away?

People talk about closure and moving on and getting on with my life, but I could tell you there is no closure when a loved one is brutally murdered. We live with our pain and our loss every day and we will for the rest of our lives, remembering Frances, missing Frances and loving Frances.

There is no closure, but there is justice, and that is now up to you.

And these are some pictures I wanted to share

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with you of my daughter and my niece, her family, and these are her two little girls.

THE COURT: Thank you, ma'am.

MS. GALLAGHER: Your Honor, those are all the witnesses I intend to call.

THE COURT: Yes. Do you have a recommendation for the State.

MS. GALLAGHER: Yes, judge, I do. You got my sentencing memorandum?

THE COURT: Yes, I read it.

MS. GALLAGHER: Your Honor, the State is requesting that the defendant be sentenced to natural life for both the killing of Joseph Pedroza and natural life for Frances.

Judge, as you know, this was alleged as a death penalty case. The only reason it isn't is because the Supreme Court said that at 16, a defendant cannot be sentenced to death.

That being said, that mitigating factor of age has been taken into account by the Supreme Court. The State recognizes the defendant is 16, but the law says he is eligible for a natural life sentence in this case.

The aggravating factors, as I set forth in my sentencing memorandum, are first the fact that there were -- this isn't a single murder. This is, obviously, a

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double.

Defense counsel says, well, the murder of Frances Tapia was not especially cruel, and they cite to the Soto Fong case out of Tucson. But they forget the Herrera case, which the Supreme Court said that 18 seconds of worrying about what was going to happen to you was sufficient to qualify as an especially cruel murder.

As you'll recall from the testimony, judge, Frances not only watched her boyfriend be killed as she's trying to drive the car, the defendant then turns the shotgun on her. So we have the mental anguish that's going on. By his own admission she is screaming. She knows

what has happened. And this isn't that they happened to be in the same room. Judge, they were sitting right next to each other and she is splattered with his brain matter when that first shot goes off.

So, there is the mental suffering. But then, when he shoots her the first time, it takes off the top of her shoulder and goes into her arm. So not only does she have the mental anguish, she has the physical pain, which is something that obviously in the Soto Fong case wasn't there. Those were execution style murders and each victim died from a single gunshot. Those were also gunshots. These are shotgun shots.

Clearly Frances anticipated what was coming next,

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because she raised her hand up to ward off the blow, which obviously that wasn't going to happen. But it shows that she knew what was going on, and that makes this an especially cruel murder.

That is not the case as to Joseph, because mercifully he didn't know. He had no idea what was coming. But as to Frances, it was especially cruel.

And the defendant even said in his statement, "Oh, well, I thought I missed her." So he had time to think about it, to recognize that, to pump that shotgun for the third time and shoot her.

The defendant's lawyers in their sentencing memorandum say, well, one of the mitigating factors is his remorse. Judge, you heard his statement two days after the murder. He was bemoaning the death of

Joseph, but said absolutely nothing about Frances, not a single word. He didn't even acknowledge knowing her name. As far as he was concerned, she was "that girl."

And he didn't want to talk about it when Detective Kulesa asked him. He didn't want to talk about what he had done to her. He said something to the effect of, "Well, that's hard for me, because I wouldn't normally do something like that. So I can't talk about it." Not, "I can't believe I shot an unarmed girl who had done nothing to me."

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Absolutely nothing, no remorse at all. And anything he comes up with now is about as compelling as his doing well in the jail.

Anything that happened since the murder is clearly towards the end of saying, let me out of prison after 25 years when I'm only 42 years old and can have the rest of my life out in the public.

It's the State's position that the defendant is dangerous. He showed he was dangerous. And he needs in addition to protecting the community, he needs to be punished for what he did, and giving a concurrent sentence says one of these victims didn't count. Either Joseph didn't count or Frances didn't count, because he wants a two-for-one with a concurrent sentence.

Defense counsel says, well, one of the mitigating factors is his capacity to conform his conduct to the requirement of the law was significantly impaired. Judge, there is no basis upon which the Court could make that finding.

Yes, he was diagnosed by Jewish Family Services as suffering from post traumatic stress disorder in 2002. That does not equate, nor is there any current psychological information, does not equate to him being unable to conform his conduct. There is no current psychological evaluation. I suffer from post traumatic

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stress disorder, and I don't go around --

MR. CANBY: Objection, your Honor.

THE COURT: I don't have your records either, Ms. Gallagher, so I don't think I can consider it. That is sustained.

MS. GALLAGHER: That is not a mental disease or defect that you naturally conclude that the person is going to become homicidal.

Those records show that he took Zoloft for a time in 2001, actually for one month, and then they switched him to Wellbutrin. It's interesting that Zoloft has been blamed for teen-agers who murder, but he wasn't on that, and it's a good thing because otherwise I'm sure we'd be hearing that that had something to do with that.

Wellbutrin is an antidepressant. That's all. It's prescribed for people who want to quit smoking. So, the fact that he stopped taking that, there is no information, no psychological information for the Court in order to make that quantum leap that somehow the fact that he wasn't taking the antidepressant had anything to do with his shooting Joseph or Frances.

And even if the post traumatic stress disorder caused him to be hyper-vigilant, if he was that hyper-vigilant he wouldn't have gotten in the car in the first place.

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What he did when he felt threatened, according to him -- well, actually according to Chad Colyer, is he went inside the house and armed himself with a shotgun and made sure it was fully loaded.

Somebody who is concerned about their safety, to the point where if they have a mental problem that's causing this, would never have gotten in the car. So clearly, he had something else in mind. And as I pointed out, what it was, we don't know. We don't know why he did this.

It could well be that it was a thrill killing. But the only person that knows is him. And no matter what excuse he comes up with, it's never going to explain why he killed Frances. That was just a cold-blooded murder that was absolutely senseless.

The State is asking that you give the defendant the maximum punishment as was recommended by the probation Department of natural life sentences for both and that they run consecutively. We would also ask for the restitution as set forth in the presentence report.

THE COURT: Thank you.

Mr. Canby.

MR. CANBY: Judge, I know you've received some numerous letters from supporters of Mr. Bassett, and

many of the people who wrote letters are here today and I

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believe they would like to stand on their letters.

I do understand Mr. Alexander would like to talk to you. He has not written a letter.

THE COURT: Yes. Would you state your name again, please.

MR. ALEXANDER: Charles Alexander.

THE COURT: Thank you.

MR. ALEXANDER: First, I'd like to express my sympathy, deepest sympathy to the families because of what's happened, and hopefully this can be resolved other than the way the prosecuting attorney wants it resolved.

We acquired Lonny when he was a baby. We brought him home from the hospital. We raised him. We fed him. We clothed him, sent him to school in which he was an honor student in some years. He was on the Dean's list several times.

He played baseball. The company that he worked for, which is my company that I have worked for, sponsored his baseball team. He played catcher. He won the championship three years in a row. Missed the fourth year by one run.

Lonny worked. I allowed him to spend his money the way he wanted to, because he earned it. And he

was being ready to be hired full time as an apprentice machinist.

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We wanted him to go to college. But at the same time, until he graduated from high school, we wanted to teach him a trade, something that he would have that he could fall back on.

All of my associates, my family and everyone that even isn't here today are working people, and some of them couldn't be here because of that very fact.

And I'm trying to get on that Lonny Bassett was not street trash. He worked. He finished everything, as you've read the letters yourself, to try and do right.

He got involved with Joseph. 16-year-old kid, no experience in the world. Joseph influenced him greatly. How? I don't know. We'll never know.

And here's a man that's been three felony convictions, in the penitentiary, and he comes along and preys on the younger generation that's coming up, 16-year-old kids.

Lonny is not the only one that Joseph had experiences with. I'll put it that way. And bringing them along, getting them to do his dirty work so he don't go back to the penitentiary. And he just got involved into something that he didn't know what he was into at 16 years old, just a kid.

And I don't know how to say this other than to tell opposite truth -- I mean the absolute truth from the

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bottom of my heart. Lonny Bassett pulled the trigger. We'll admit that. We all know that.

Joseph was responsible for Frances' death and everyone of you out there know that also.

I'm sorry, your Honor.

THE COURT: You need to address me, please.

MR. ALEXANDER: I'm sorry, but I get carried away. I've heard all of these fancy stories and everything this morning. And if all of that is so true, and these two people were so great, what were they doing out at 2:00 o'clock in the morning full of methamphetamine, hauling kids around. Why didn't they stay home with their family? Why didn't they stay home and take care of their own kids that these people have made so much statements about. Both of them were high on methamphetamine and out here running with the 16-year-old kids.

And what happened in that car that night we'll never know. But something had to happen. As I said before, Lonny Bassett was not street trash. Something happened that made him do what he did.

And Joseph was leading Frances down the same yellow brick road that he was travelling. And I hate to say that, but that's the honest truth, because there she was.

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And what happened with Lonny shooting the two of them, we will never know. But something happened in that automobile to make him do that, because that is not Lonny Bassett.

Thank you, your Honor.

THE COURT: All right. Thank you, sir.

Mr. Canby.

MR. CANBY: Judge, I believe we have another person.

THE COURT: Yes. Your name, please.

MS. TREINEN: Amanda Treinen.

I went to junior high with Lonny. I've known him going on five-and-a-half years. In the five-and-a-half years I have never known him to do anything but be somebody that I can count on.

Currently, we're engaged, and I'm willing to wait as long as it takes to be with him. I love him and that's all that matters to me. No matter what happens I'm going to be there for him.

He's somebody that has been there for me. He made a bad decision. He shouldn't have got in the car that night if he was that scared, and I totally agree with you on that point. But we all make bad decisions.

Lonny has been so responsible in the five years I've known him. Every summer prior to this two things

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have been done, he plays baseball and works at Phillips Plastics. It was counted on.

He was always there if I needed somebody to cry with. He was always there to hold me. He was there to tell me a joke when he wanted me to laugh, because he didn't want me to cry because it hurt him.

The biggest thing I really would like you to consider before you make your decision is his age. He was 16 when it happened. He was scared.

He's never had this -- he's never been through this before. He's never had any criminal history before today, before we're here on this instance. He's got a life ahead of him. This is his first offense.

I mean, we all have hard times in our lives, and I understand this is very hard for all the families here, including ours. And on behalf of Lonny Bassett and I, we would like to extend our apologies to the families for everything.

I would just like you to please consider the fact that this is his first offense. This isn't just some -- like what grandpa said, he's not street trash. He is an honest, caring person that has tons of friends that can't -- that all of them can't even be here today.

He's been -- he was good in school. He was there when people -- when he needed there to be for people.

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That's just something that we would like you to consider on behalf of his family.

THE COURT: All right. Thank you.

MR. CANBY: Judge. the first thing I want to do is assure you this is not a joke to anyone in this courtroom. I am sure you can appreciate that fact.

Judge, I'm asking to you consider the fact that Lonny Bassett was a child at 16 years old when he committed the crimes that we're here to sentence him for. One of the reasons that the Supreme Court eliminated the death penalty for juveniles is that they took notice of numerous scientific studies that have been done recently that establish that the portions of the brain that control impulsivity and foresight and appreciation of consequences don't really form fully until the early 20's.

You know, the case that was cited by Ms. Gallagher in her memo that says you need to look beyond chronological age and look at the other things, involved a defendant who was 22 years old. And in that situation the mitigating aspect of the age is not quite as apparent. But at least for the Supreme Court of this country, the chronological age of 16 alone is mitigating on its own.

Ms. Gallagher has pointed out that Lonny had a lot more freedom than a lot of 16-year-olds do, that he

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drank beer, that he had a job, that he had money of his own.

And the implication for her is that this means he's mature, and this should not be a mitigating factor. But, judge, freedom and maturity are two different things. One of the things we learn from the facts of this case is that Lonny did not possess the maturity to handle the freedom that he'd been given.

Now, the three misdemeanor incidents that were never actually -- never went to court and never resulted in convictions that Ms. Gallagher points to in her memorandum are really not evidence of his maturity. In fact, they are the opposite.

First of all, they are minor offenses, and we don't really know. They are just mere accusations. We didn't really get to get to the court on that and see how this stood up. But nonetheless, they are not the type of sophisticated crime that shows maturity. They appear to be immature juvenile acts that were appropriately dealt with as such.

It's one thing to say look, he had freedoms; therefore, he's mature, and then turn around and say look at his history. But you've got to remember the history has implications for maturity as well. These were not mature acts. This was a 16-year-old, clearly acting

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immaturely. The facts of this case bear that out.

Judge, in overturning the death penalty, Justice Kennedy in Roper vs. Evans -- and I know I've put it in my memo and I won't go on too long about this -- but he cited three things that I think are applicable to this case.

He talked about the poor impulse control of people Lonny's age. And the reason the post traumatic stress syndrome is important in this case is that that impulsivity may well have been compounded in this case by this condition that he had been diagnosed with. And it is documented, yes, in our memo, and it's also documented in the memo provided by the State and comments by Stan Bright.

Judge, in the presentence report, which I hope you won't put too much weight on, which was written by a person that didn't attend the trial, there is not one motion of his history. There is no motion of his psychological background. Now, that may be because he didn't participate in an interview. But it's interesting that the State puts in its memo, quotes documents from his probation file that talk about this post traumatic stress disorder, which is clearly something that would have to be considered as mitigating, and they are unaware of it.

And so they write a report by the probation department that doesn't even take into account the

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information in their own file. There was not any attempt to objectively look at this case, and I would hope that the pretrial -- the pretrial services report is taken as the incomplete document that it is. You saw

the trial, judge. You know a lot more about this case than that presentence report writer.

Judge, the second thing that Justice Kennedy talked about in Roper vs. Simmons is that juveniles are susceptible to negative influences, particularly susceptible, more than adults, and that certainly applies to his relationship with Joseph Pedroza in this case.

Judge, the final thing Justice Kennedy pointed to as a reason why juveniles should not be subject to the death penalty was that juveniles' characters are not fully formed. He wrote in that opinion that, "The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient. As individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." Your character is not fully formed at 16.

Judge, based on the support that Lonny has and the impression he's made on all these people at the courthouse, Lonny may well have the tools to better himself in the future, and we are asking that he be sentenced in a manner that if he outgrows his character

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flaws, and if in the opinion of qualified professionals he has earned the right that he be considered for parole no earlier than 25 years from now, that if he earns that right and if it is appropriate, that he be given that opportunity.

Judge, 25 years is a very long time. It is two-and-a-half times his life at the time of this crime.

Thank you very much.

THE COURT: Now, Mr. Bassett, do you wish to say something on your own behalf today?

THE DEFENDANT: Yes, I do, sir.

THE COURT: All right.

THE DEFENDANT: Before Mr. Bassett speaks, however, Mr. Canby, is there any dispute as to the amount of restitution?

MR. CANBY: No, your Honor.

THE COURT: Thank you.

Yes, Mr. Bassett.

THE DEFENDANT: First of all, I'd like to thank you for letting me speak today. And I had some things wanted to say, but before the I say that if I could address the gallery, if that's all right.

THE COURT: Yes.

THE DEFENDANT: I'd like to apologize to Frances Tapia and Joseph Pedroza's family and to the whole court

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for what my Grandpa said. That was an inappropriate statement. I understand emotions are high today and built up emotions from almost two years now.

Please understand that no one in this courtroom, no one on either side, will take this as a joke. Thank you.

I'd like to read some stuff that I had --

THE COURT: Hold on one second.

We're going to stand in recess. We'll call you back into the courtroom when we're to proceed.

(Brief recess.)

THE COURT: The record will show the presence of the defendant and counsel.

Mr. Bassett, you may continue.

THE DEFENDANT: All right. To the family and friends of Joseph Pedroza and Frances Tapia –

THE COURT: Mr . Bassett, the court reporter is behind you so you need to keep your voice up.

THE DEFENDANT: I would like to say that to stand here and say I'm sorry is hard, because I know you guys deserve much more than that. But it's going something I wanted to since June 16th of '04, when I watched your reaction to what happened on TV. I've watched you suffer in court, and I've seen your pain through the media, and it tears me up inside knowing that I caused that pain.

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I admire you all for your strength to be here today, but I sympathize for the reason why you were here. I would like to apologize to all of you for suffering because of what I've done, especially Ms. Ruth Stevens,

Ms. Trina Trumbull, Mr. Tony Tapia, also to the three children who lost a parent because of me. They will probably suffer through this longer than anyone.

I am truly sorry that I took away two very special people in your lives. I can understand if my apologies are not accepted today, or any day for that matter. Please know that my words are sincere and I hope that you some day try to find it in your hearts to forgive me.

Thank you for listening to what I had to say, and God bless you all for what you've had to go through.

That's what I wrote. But hearing everything you guys have said, I also want to add that what I said before, please don't think that at any time during this I've taken any of this as a joke or my family. Thank you.

And to my family and friends, I want to thank you for all the support and kindness that you've shown me through all this. You have all helped me in one way or another, and it has been greatly appreciated. Darren, Will, Ashley, Bob, you all forever will have my love and my respect.

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I'd also like to thank my fiancee for being there for me over the years, especially these last couple.

I want to thank Debbie, who has been like a mom to me, and supporting my family through anything and everything.

I also want to thank my Uncle Scott, who has been like a father to me. You have helped, taught and given

me more than you'll ever realize. Your kindness and generosity know no limits.

Most of all, I want to thank the two most influential people in my life, my grandma and my grandpa. Grandma, you were the one who raised me. You have never let me down. I know you never will. You mean more to me than you'll ever know.

Grandpa, you're my role model, my teacher and my best friend, and I still hope to be like you some way. You two took me in and gave me the world when you didn't have to. There is not enough hours in the day to explain how much you mean to me, so just know that I love you two more than anything in the world. But I love you all and thank you for coming. And God bless you and know that you're always in my prayers.

Judge, thank you, sir, for giving me the chance to speak. It means a lot to me. And thank you for your assistance on the side issues during the trial, like the

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pen situation and the other distractions. It was greatly appreciated.

I have watched you sentence many people in this courtroom, and I have noticed that you are a very fair man, so I will respect whatever sentence you give me today. And I feel better knowing that I won't have to serve my time alone, because God will be there with me every day.

I know the families of the victims may never forgive me, but I hope to earn God's forgiveness during my

lifetime. That's why I will continue -- that's why I will continue to better myself and become the most intelligent and respectful person I can be.

I am not the same kid I was two years ago, just like I won't be the same guy I am now years down the road. But I do know that my love for others, my dreams of freedom and my faith in God will never change.

I am not one to ask for things, sir, but I am asking you to please take into consideration everything I've said today before you make your decision.

Thank you again, sir, for allowing me to speak, and God bless.

THE COURT: Is there any legal cause not to proceed?

MR. CANBY: No, your Honor.

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MS. GALLAGHER: No, your Honor.

THE COURT: First of all, to resolve the issue without contest, that is the issue of restitution, the Court does order restitution at this time in the amount of $22,534.13 to the people listed in the restitution ledger request and in the amounts listed, with the individual victims to be paid first and the Victim Compensation Fund to be paid last, in the ordinary manner while you're incarcerated, Mr. Bassett, under the state law.

Now, with respect to the sentence in this case, I have considered all of the written materials that have

been submitted. I have read them carefully. I've read all the letters that were submitted by friends and family on both sides of this case.

And I've considered the following factors: I've considered the emotional harm to the victims, the surviving family members. And the harm to the surviving family members is substantial, and as we heard today it spans several generations.

I have considered the physical cruelty as to Frances Tapia. She was conscious after the first wound was inflicted by you. She reacted to it. She tried to deflect the second shot she anticipated. She undoubtedly suffered physical pain before she was killed. She was still driving, and some period of time separates the two

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shotgun blasts. And as the evidence also established, she was screaming between the shots.

I've considered the basic statutory aggravating factors of the serious physical injury, which goes without saying, and the use of a deadly weapon also pointed out by both counsel on both sides. I've considered the fact that these are multiple homicides.

I've considered your juvenile delinquent behavior and record. You do have two adjustments for possession of marijuana and possession for drug paraphernalia and for assault in 2003.

I've considered also the grave risk of death to Chad Colyer. You shot the driver of a vehicle in which Mr. Colyer was the passenger.

I also considered the fact you brought extra ammunition into the car as evidence of your intent and as evidence of your -- the danger that your conduct presents to the public.

I've considered the following factors which are in mitigation:

Your age. You were 16-and-one-half years old at the time of the crimes, and this factor is given considerable weight by the Court. But the weight is tempered because of your intelligence, your obvious intelligence, the fact that you were able to obtain and

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hold employment and apparently do very well with employment.

I've also considered your contact with the juvenile justice system as a factor in your level of maturity, because in those contacts with the juvenile justice system you were given the opportunity to seek help, to address any issues that were present as a result of any mental health conditions such as the post traumatic stress disorder. And so even though you were young, you were presented with help, and you could have taken advantage of it. It's clear that you didn't.

In terms of the post traumatic stress disorder, that was diagnosed at age 14, and it was manageable with medication, according to the brief records that I was provided. But you stopped taking your medication, as indicated in the last doctor's note that was submitted to the Court.

I've considered your accomplishments in jail. Those are entitled to minimal weight.

And I've considered the support of your family and friends. It's certainly expected, it's understandable, and it is given some weight as well.

And I've considered your statement of remorse, and also note that up until today, as Ms. Gallagher has stated, there was no remorse expressed concerning your

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killing of Frances.

I've taken all of these factors into account, Mr. Bassett, and what I am left with in this case with respect to Count 1, the murder of Frances Tapia, is that your behavior, your conduct, is evidence of a hardened heart, in my opinion, and I believe it is a personality trait that is extremely dangerous to the public.

There is no presumptive sentence for first degree murder when the death penalty is not allowed, and in your case it is not allowed, so I approach this with an open mind. And after reading all these materials and reflecting on the evidence during the trial, it is my opinion that the danger you present to the public cannot be addressed with anything less than a natural life sentence.

So as to Count 1, it is the judgment and sentence of the Court that you be imprisoned in the state prison for the term of your natural life.

As to Count 2, the circumstances are different, in my opinion, because of the facts of the case and what happened in that car that day. Giving full credit to all the aggravating and mitigating factors, I believe that the appropriate sentence, and it is the sentence imposed by the Court today, that you be imprisoned in the State prison for the term of your life with the possibility of

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parole after 25 years. That sentence is to run, however, consecutively to Count 1.

The sentences date from today. You are entitled to 588 days of credit against the sentence.

You have the right to file a notice of appeal from today's judgment. You must file that notice within 20 days of today's date or you will lose that right.

Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Then it's ordered remanding you to the custody of the sheriff for the imposition of sentence.

(The proceedings concluded.)

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I Melody O'Donnell, do hereby certify that the foregoing pages constitute a true and accurate transcript of my stenographic notes, taken at said time and place, all done to the best of my skill and ability.

DATED this 8th day of March, 2006.

/s/ Melody O'Donnell
Certified Court Reporter
No. 50209

APPENDIX 2

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2004-005097-01DT

[Dated January 25, 2006]

STATE OF ARIZONA,	)
Plaintiff,	)
	)
vs.	)
	)
LONNY BASSETT	)
Defendant.	)
	)

Defendant's Sentencing Memorandum

(Honorable Brian Hauser)

Defendant, Lonny Bassett, through Deputy Legal Defender John Canby, hereby files the following Sentencing Memorandum for the court's review prior to pronouncing sentence in the above-entitle matter.

Dated this 25th day of January, 2006.

ROBERT S. BRINEY
OFFICE OF THE LEGAL DEFENDER

By /s/ John Canby
John Canby

I. Procedural Facts

As this court is well aware, Lonny Bassett was found guilty by a jury of two counts of First Degree Murder after a jury trial before this court.

II. Childhood Background of Lonny Bassett

In 1987 Diane Kloepfer already had a son, Will, who was less than one year old. Diane, who was pregnant with Lonny, was having a hard time caring for Will. She was completely unprepared for another child. Will and Lonny's father, Merrill Bassett was not much help.

Diane Kloepfer befriended Charles and Jane Alexander, a much older couple, after meeting them at a motocross race where the Alexander's son Scott was competing. Diane gave birth to Lonny on November 18, 1987 at St. Joseph's Hospital in Phoenix. Jane Alexander reports that Diane called her from the hospital after Lonny was born and asked the Alexander's to take Lonny off her hands. She indicated that she did not want the responsibility of caring for Lonny. Lonny was raised by Charles and Jane Alexander. Diane kept custody of Will. Diane lived with the Alexander's periodically, when she would break up with Merrill.

In August of 1989 Merrill Bassett snatched Lonny and Will and left the state for an unknown location. On September 1, 1989 Merrill Bassett was charged with two counts of custodial interference in Maricopa County Superior Court Cause Number CR1998-009047. On September 6, 1989 Merrill Bassett was found with the children and arrested in Council Bluffs, Iowa. Merrill Bassett eventually returned to face the charges in Arizona and was convicted after a trial in February of 1992. (See Exhibit A, attached). Upon Lonny's return to Arizona, the Alexander's resumed taking responsibility for his care and upbringing. As recently as January 23, 2006, Merrill Bassett was listed as "Wanted" for being $26,203.00 in child support arrearages. (See Exhibit B, attached).

III. Employment

In the summer of 2001, when Lonny was 14 years old, Lonny began working as a janitor for a company Charles Alexander worked for called Phillips Plastics in Phoenix, Arizona. Initially Lonny's duties included cleaning, filing and shipping. In the summer of 2004 Lonny was promoted to the position of "apprentice machinist" and received a raise. A letter from Phillip Smid and Susan Boulanger, (President and Vice-President, respectively), describe Lonny as an ethical hard worker who was a pleasure to have around. (See Exhibit C, attached).

IV. Accomplishments While Incarcerated

Lonny has taken full advantage of the few opportunities for self-improvement available to him as an inmate in the Maricopa County Jail. He attended

the "Hard Knock's High School Program," completing courses in Biology, Literature and Geometry. He obtained his High School Equivalency Diploma on February 25, 2005. (See Exhibit D, attached).

V. Post Traumatic Stress Disorder

In 2002 Lonny began receiving therapy with Jewish Family and Children's Services for some of the symptoms he was still experiencing as a result of his experiences with his natural mother and father. Records obtained from Jewish Family and Children's Services indicate that Lonny was diagnosed with Post Traumatic Stress Disorder in the course of his treatment. . The same records detail Lonny's exposure to violence and abuse at the hands of his biological father. (See Exhibit E, attached). Jane Alexander reports that Lonny first began making statements about physical and sexual abuse at his father's residence as early as age 3.

According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Addition, the symptoms of Post Traumatic Stress Disorder include hypervigilance, and an exaggerated startle response. (See Exhibit F, attached).

Records defense counsel was able to obtain from Jewish Family and Children's Services indicate that as of April 10, 2002 Lonny was non-compliant with his medications with the records indicating that he is less aggressive when he stays on his medications.

Jane Alexander also reports that Lonny stopped taking his prescribed medications sometime in 2003 because of side effects. At the time of the shootings of

Joseph Pedroza and Frances Tapia, it appears that Lonny was not taking the medications he had been prescribed to address his Post Traumatic Stress Disorder symptoms. It is likely that this contributed to the manner in which he reacted to the events surrounding the deaths of Joseph Pedroza and Francis Tapia.

Discussion of Mitigating and Aggravating Circumstances

I. Statutory Aggravating Circumstances:

The State has alleged the following aggravating circumstances in this case:

(1) The offenses involved the infliction of serious physical injury.

(2) The offenses involved the use of a deadly weapon.

(3) The Defendant committed the crime in an especially cruel manner as to Francis Tapia.

(4) The defendant was convicted of the other homicide (multiple homicides).

With respect to (1) listed above, every homicide involves the infliction of serious physical injury. Item (2), use of a deadly weapon is present in most homicide cases. These factors do not make this case any more aggravated than any other homicide case and should be given minimal weight. Although not alleged by the state, the aggravating circumstance of the emotional harm to the victim's family is also present in virtually every homicide case.

Cruelty as to Francis Tapia

With regard to (3), case law simply does not support a finding that the killing of Francis Tapia was especially cruel.

The State has suggested that it was Francis Tapia's contemplation of her fate after Joseph Pedroza was shot that makes her killing especially cruel. In *State v. Cropper*, 206 Ariz. 153, 156, 76 P.3d 424, 427 (2003), the Arizona Supreme Court made clear that it had clarified the law regarding the especially cruel aggravating factor in its opinion in the case of *State v. Soto-Fong*, 187 Ariz. 186, 191, 928 P.2d 610, 615 (1996). *Soto-Fong* involved the killing of a grocery store manager, his uncle and an employee during a robbery, in the same room. *In Soto-Fong*, at least one victim saw and/or clearly knew what was happening when the first victim and perhaps the second were shot. 187 Ariz. at 190, 202, 928 P.2d 614, 626. The court noted that:

> Our cases hold that a killing is especially cruel if the victim suffers mental anguish by watching or hearing the defendant kill another person. *See State v. Runningeagle,* 176 Ariz. 59, 65, 859 P.2d 169, 175, *cert. denied*, 510 U.S. 1015, 114 S.Ct. 609, 126 L.Ed.2d 574 (1993); *State v. Kiles*, 175 Ariz. 358, 372, 857 P.2d 1212, 1226 (1993), *cert. denied*, 510 U.S. 1058, 114 S.Ct. 724, 126 L.Ed.2d 688 (1994); *State v. Greenway*, 170 Ariz. 155, 166, 823 P.2d 22, 33 (1991); *State v. Lavers*, 168 Ariz. at 392, 814 P.2d at 349. However, in each of these cases, the victim watched or heard either a parent or a spouse killed while the victim awaited his or her own fate. More

> importantly, none of these cases involved the rapid type of murders involved here. Were there evidence that the trio had forced a victim to wait while the other victims were shot, the state might have a valid mental cruelty argument. On the facts presented in the briefs and at trial, however, when Fong began shooting, he was quickly joined by Minnitt, and the three victims were killed in rapid succession without any appreciable time to contemplate their fate. 187 Ariz. at 190, 202, 928 P.2d 614, 626.

The killings at issue in this case closely resemble the situation present in *Soto-Fong*. According the State's own witnesses, Ted Clavell and Chad Colyer, Joseph Pedroza and Francis Tapia were killed in rapid succession and Francis Tapia would have had no more time to contemplate her fate then the victims in Soto-Fong. The death of Francis Tapia was not *especially* cruel.

<u>Double Counting of An Aggravating Circumstance</u>

If the State's argument regarding the cruelty of Francis Tapia's death is correct the aggravating circumstance would be present in any case involving multiple homicides which is also a statutory aggravating circumstance. Virtually all multiple homicide cases involve the killing of one person followed thereafter by the killing of another person. In this case the same facts are being used to support both the multiple homicide aggravating circumstance and the especially cruel aggravating circumstance. However double counting of aggravating circumstances violates

the Double Jeopardy Clause of the United States Constitution. *State v. Medina*, 193 Ariz. 504, 512, 975 P.2d 94, 102 (1999) (although the fact finder may use one fact to find two aggravating circumstances, the fact cannot be weighed twice in balancing aggravating and mitigating factors).

II. Mitigating Circumstances:

The following mitigating circumstances are present in this case:

(1) The Age of the Defendant.

(2) The Defendant's capacity to conform his conduct to the requirements of the law was significantly impaired.

(3) The Defendant's Attempts at Self-improvement While Incarcerated and Prospects for Rehabilitation.

(4) The Defendant's Remorse.

Age of the Defendant

Lonny Bassett was 16 years old when he committed the crimes for which he is being sentenced. This fact is mitigating. It is common knowledge that 16 year olds do not possess the judgment and impulse control of an adult. This is why they are not allowed to drink, vote or otherwise engage in certain adult activities.

In the majority opinion in *Roper v. Simmons*, the case which overturned the juvenile death penalty, Justice Kennedy wrote of the profound differences between adults and juveniles and the ramifications those difference make when addressing juvenile crime.

Justice Kennedy pointed to three general differences between juveniles and adults:

First:

> [A]s any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." *Johnson*, *supra*, at 367, 113 S.Ct. 2658; see also *Eddings*, *supra*, at 115-116, 102 S.Ct. 869 ("Even the normal 16-year-old customarily lacks the maturity of an adult"). *Roper v. Simmons*, 543 U.S. 55, 125 S.Ct. 1183, 1195.

Second:

> [J]uveniles are more vulnerable or susceptible to negative influences Third: and outside pressures, including peer pressure. *Eddings*, *supra*, at 115, 102 S.Ct. 869 ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage"). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. *Roper v. Simmons*, 543 U.S. 55, 125 S.Ct. 1183, 1195.

Third:

> [T]he character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E. Erikson, Identity: Youth and Crisis (1968). These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." *Thompson*, *supra*, at 835, 108 S.Ct. 2687 (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford*, 492 U.S., at 395, 109 S.Ct. 2969 (Brennan, J., dissenting). The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Johnson*, *supra*, at 368, 113 S.Ct. 2658; see also

> Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood"). *Roper v. Simmons*, 543 U.S. 55, 125 S.Ct. 1183, 1195.

Capacity To Conform Conduct to Requirements of the Law

Through no fault of his own and as result of the traumatic events surrounding his kidnapping and custody battle, Lonny Bassett was diagnosed with Post Traumatic Stress Disorder. He suffered from both hypervigilance and an exaggerated startle response when confronted with stressful situations. This may well have led Lonny to severely overreact to events on the night of the shootings.

Prospects for Rehabilitation

Lonny's employers report that he was an exemplary worker. They write that he was ethical and a pleasure to be around. It is also apparent that Lonny has taken full advantage of the few opportunities for self-improvement available to an incarcerated inmate awaiting trial in the Maricopa County Jail. These facts bode well for his prospects for rehabilitation.

Attached as Exhibit G are additional letters from citizens who have come in contact with Lonny in various contexts and who were impressed by his character.

Remorse

Lonny Bassett will express his remorse at the time of sentencing.

III. Conclusion

The court in this case can require Lonny Bassett to spend the rest of his life in prison without any prospect of release. On the other hand the court can also impose a sentence that would allow Lonny Bassett the possibility of earning his release based on rehabilitation and good conduct while serving at the very least the next 25 years of his life in prison. A sentence that would allow for his release during his lifetime would severely punish Lonny for his crimes while recognizing that rehabilitation and self-improvement can occur while a person grows from a boy into middle or old age. A sentence of life with possibility for parole would mean that Lonny would be released after serving at least 25 years only if in the opinion of qualified corrections experts he had demonstrated through his behavior that he was truly rehabilitated. Lonny's age and the circumstances of his upbringing make this possibility appropriate in this case.

Dated this 25th day of January, 2006.

ROBERT S. BRINEY
OFFICE OF THE LEGAL DEFENDER

By /s/ John Canby
John Canby

Original of the foregoing Pleading
mailed/hand-delivered this 25th day
of January, 2006 to:

Clerk of the Superior Court
201 West Jefferson
Phoenix, Arizona 85003

Copies of the foregoing Pleading
mailed/hand-delivered this 25th day
of January, 2006 to:
The Honorable Brian Hauser
Judge of the Superior Court
2001 W. Jefferson St., 4th Floor
Phoenix, Arizona 85003

Jeanette Gallagher
Deputy County Attorney
301 West Jefferson, 8th Floor
Phoenix, Arizona 85003

[***Exhibits omitted
for purposes of this Appendix***]

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**IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CR 2004 - 005097 - 001 DT

[Dated January 23, 2006]

STATE OF ARIZONA,)
Plaintiff,)
)
vs.)
)
LONNY BASSETT)
Defendant.)
)

SENTENCING MEMORANDUM

(Assigned to the Honorable Brian Hauser)

The State of Arizona, by and through undersigned counsel, and provides the attached sentencing

memorandum for the Court's use in determining the appropriate sentence for the Defendant, Lonny Bassett.

Respectfully submitted this 23 day of January, 2006.

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

BY [signature] for
Jeannette R. Gallagher
Deputy County Attorney

SENTENCING MEMORANDUM

Range of Sentences:

During the early morning hours of June 16, 2004, the Defendant, LONNY BASSETT, ended the lives of Joseph Pedroza and Frances Tapia for reasons known only to him. Was it an armed robbery? Did Joseph have drugs or money that the Defendant wanted? Was it jealously because Joseph was ignoring him, preferring to spend time with his new girlfriend? Was it revenge for some slight by Joseph? Or was it a thrill killing? Did the Defendant murder these two people in cold blood because he could? The answer to the question of why may never be know but, by the jury's verdict, the answer is not that this was self-defense. Having been convicted of two counts of Murder in the First Degree, the range of sentence for each count is life without the possibility of parole for 25 years or natural life.

* * *

APPENDIX 3

ARIZONA SUPREME COURT

No. _____________

No. 1 CA-SA 22-0152

Maricopa County Superior Court No. CR2004-005097

[Dated September 9, 2022]

STATE OF ARIZONA ex rel.)
RACHEL H. MITCHELL,)
Maricopa County Attorney)
Petitioner/Plaintiff,)
)
vs.)
)
THE HONORABLE KATHERINE COOPER,)
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA,)
in and for the County of MARICOPA,)
Respondent Judge,)
)
LONNIE ALLEN BASSETT,)
Real Party in Interest/Defendant.)
)

STATE'S PETITION FOR REVIEW

RACHEL H. MITCHELL
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* * *

[p.36]

Addendum C **Cases where sentences of life with or without the possibility of parole after a period of years were imposed** (cited below).

1. ***State v. Marshall***, No. 1 CA–CR 14–0501 PRPC, 2016 WL 4045368, at *1, ¶2 (Ariz. App. July 28, 2016) (mem.) (sentence of "life imprisonment with a possibility of parole after twenty-five years" imposed for a first-degree murder committed in 1998).

2. ***State v. Beltran***, No. 1 CA–CR 14–0494 PRPC, 2016 WL 3463308, at *1, ¶2 (Ariz. App. June 21, 2016) (mem.) (sentence of "life in prison with the

possibility of parole after twenty-five years" imposed for a first-degree murder originally sentenced in 1999).

3. ***State v. Hooks***, No. 1 CA–CR 14–0500 PRPC, 2016 WL 4394530, at *1, ¶2 (Ariz. App. Aug. 18, 2016) (mem.) (sentence of "life imprisonment with a possibility of parole after 25 years" imposed for a first-degree murder committed in 1999).

4. ***State v. Nouan***, No. 1 CA–CR 14–0503 PRPC, 2016 WL 4761928, at *1, ¶2 (Ariz. App. Sept. 13, 2016) (mem.) (sentence of "life imprisonment with the possibility of parole after 25 years" imposed for a first-degree murder; Nouan was convicted of murder in 1999); *cf. Nouan v. Ryan*, CV–17–02743–PHX–GMS–ESW, 2018 WL 7570286, at *1 (D. Ariz. Oct. 19, 2018)).

5. ***State v. Agboghidi***, 1 CA–CR 15–0123 PRPC, 2017 WL 4247961, at *1, ¶2 (Ariz. App. Sept. 26, 2017) (mem.) (sentence of "life with the possibility of parole after 25 years" imposed for a first-degree murder committed in 2004).

6. ***State v. Lee***, No. 1 CA–CR 14–0496 PRPC, 2016 WL 3854436, at *1, ¶2 (Ariz. App. July 12, 2016) (mem.) (sentence of "life imprisonment with a possibility of parole after twenty-five years" imposed for a first-degree murder committed in 2004).

7. ***State v. Jara***, 2 CA–CR 2016–0149–PR, 2016 WL 3188911, at *1, ¶¶1-2 (Ariz. App. June 7, 2016) (mem.) (two "life terms of imprisonment

with the possibility of parole after twenty-five years" imposed in 2007).

8. ***State v. Coleman***, No. 1 CA–CR 14–0495 PRPC, 2016 WL 3944541, at *1, ¶2 (Ariz. App. July 19, 2016) (mem.) (sentence of "life imprisonment with a possibility of parole after 25 years" imposed for a first-degree murder committed in 2009).

9. ***State v. Vera***, 334 P.3d 754, 755, ¶2 (Ariz. App. 2014) (sentence of "life without parole for twenty-five (25) years" imposed for a first-degree murder committed in 1995);

10. ***State v. Bautista***, 1 CA–CR 14–0497 PRPC, 2016 WL 3959954, at *1, ¶2 (Ariz. App. July 21, 2016) (mem.) (sentence imposed in 1998: "life imprisonment for first degree murder without the possibility of parole for 25 years" committed in 1998).

11. ***State v. Randles***, 334 P.3d 730, 731, ¶3 (Ariz. App. 2014), as amended (Sept. 22, 2014) (sentence of "life in prison without the possibility of parole until he served a minimum term of 25 years" imposed for a first-degree murder committed in 2011).

Addendum D Cases where sentences of life with or without the possibility of release after a period of years were imposed.

1. ***State v. Finley***, No. 1 CA–CR 14–0499 PRPC, 2016 WL 4046945, at *1, ¶2 (Ariz. App. July 28, 2016) (mem.) (sentence imposed in 1994 of "life in prison with the possibility of release after 25 years" for first-degree murder).

2. ***State v. Torres***, No. 2 CA–CR 2015–0052–PR, 2015 WL 2452297, at *1, ¶2 (Ariz. App. May 20, 2015) (mem.) (sentence of "life in prison with no eligibility for release for twenty-five years" imposed for first-degree murder committed in 1994); *cf. State v. Torres*, 2 CA–CR 2009–0302–PR, 2010 WL 715994, at *1, ¶ 2 (App. Mar. 1, 2010).

3. ***State v. Cox***, 2 CA–CR 2014–0035–PR, 2014 WL 4816081, at *1, ¶2 (Ariz. App. Sept. 29, 2014) (mem.) (sentence of life "without the possibility of release for twenty-five years" imposed for first-degree murder convicted in 1994).

4. ***State v. Cassa***, No. 2 CA–CR 2015–0237–PR, 2015 WL 5178560, at *1, ¶2 (Ariz. App. Sept. 3, 2015) (mem.) (sentence of "life imprisonment without the possibility of release for twenty-five years" imposed for first-degree murder originally sentenced in 1995).

5. ***State v. Valle***, No. 1 CA–CR 15–0539 PRPC, 2017 WL 4638252, at *1, ¶2 (Ariz. App. Oct. 17,

2017) (mem.) (sentence of life “with the possibility of release after 25 years” imposed for first-degree murder committed in 1995).

6. ***State v. Martinez***, No. 2 CA–CR 2017–0290–PR, 2017 WL 5153566, at *1, ¶2 (Ariz. App. Nov. 7, 2017) (mem.) (sentence imposed in 1997 of “life imprisonment without the possibility of release on any basis for twenty-five years” for first-degree murder).

7. ***State v. Hopper***, No. 2 CA–CR 2014–0029–PR, 2014 WL 5422143, at *1, ¶2 (Ariz. App. Oct. 24, 2014) (mem.) (sentence of “life imprisonment with no possibility of release until completion of twenty-five years” imposed in 1998 for first-degree murder pursuant to plea agreement).

8. ***State v. Cruz***, 2 CA–CR 2014–0102–PR, 2014 WL 5038151, at *1, ¶2 (Ariz. App. Oct. 8, 2014) (sentence of “life without the possibility of release on any basis for twenty-five years” imposed for a first-degree murder originally committed in 2000); *cf.* datasearch https://corrections.az.gov/public-resources/inmate-datasearch (last accessed on July 14, 2021, searching for “Ralph David Cruz”).

9. ***State v. Mendez***, No. 2 CA–CR 2016–0091–PR, 2016 WL 2855660, at *1, ¶2 (Ariz. App. May 16, 2016) (mem.) (sentence of “life in prison without the possibility of release for twenty-five years” imposed for first-degree murder committed in 2000); *cf. Mendez v. Ryan*,

CV–17–00287–DJH–MHB, 2017 WL 5514192, at *1 (D. Ariz. Oct. 18, 2017), report and recommendation adopted, CV–17–00287–PHX–DJH, 2017 WL 5496194 (D. Ariz. Nov. 16, 2017).

10. ***State v. Cruz***, No. 2 CA–CR 2014–0160–PR, 2014 WL 6607491, at *1, ¶2 (Ariz. App. Nov. 20, 2014) (mem.) (sentence of "life in prison without the possibility of release for twenty-five years" imposed for a first-degree murder committed in 2004).

11. **<u>THIS CASE</u>:** ***State v. Bassett***, 2 CA–CR 2016–0151–PR, 2016 WL 3211766, at *1, ¶2 (Ariz. App. June 9, 2016) (mem.) (sentence of life "without the possibility of release for twenty-five years" imposed for one of two first-degree murder convictions committed before 2005); *cf. State v. Bassett*, 161 P.3d 1264, 1265, ¶ 3 (App. 2007) (noting the trial took place in 2005)). Of note, sentencing minute entry reflects sentence of "natural life without the possibility of parole" imposed for the murder in Count 1 and "natural life with the possibility of parole after 25 years" imposed for the murder in Count 2.

12. ***State v. Hutchinson***, No. 2 CA–CR 2016–0150–PR, 2016 WL 4409284, at *1, ¶2 (Ariz. App. Aug. 16, 2016) (mem.) (sentence imposed in 2008 of "life term without the possibility of release for twenty-five years" for first-degree murder).

13. ***State v. Otero***, No. 1 CA–CR 15–0639 PRPC, 2017 WL 2376331, at *1, ¶2 (Ariz. App. June 1, 2017) (mem.) (sentence imposed in 2008 of "life in prison with the possibility of 'release' after 25 years" for first-degree murder).

14. ***State v. Paulson***, No. 2 CA–CR 2011–0278, 2012 WL 5363109, at *1, ¶1 (Ariz. App. Oct. 31, 2012) (mem.) (sentence of "life imprisonment with the possibility of release in twenty-five years" imposed for first-degree murder committed in 2008).

15. ***State v. McDaniel***, No. 1 CA–CR 14–0559 PRPC, 2016 WL 4089144, at *1, ¶2 (Ariz. App. Aug. 2, 2016) (mem.) (sentence of "life imprisonment with a possibility of release after thirty-five years" imposed for first-degree murder as a dangerous crime against children committed in 2008).

16. ***State v. Cannon***, 1 CA–CR 14–0498 PRPC, 2016 WL 3884902, at *1, ¶2 (Ariz. App. July 14, 2016) (mem.) (sentence imposed in 2010 of "life with the possibility of release after twenty-five years" for first-degree murder).

17. ***State v. Legliu***, No. 1 CA–CR 11–0043, 2013 WL 269048, at *2, ¶12 (Ariz. App. Jan. 24, 2013) (mem.) (concurrent sentences of "life without the possibility of release for twenty-five years" imposed for first-degree murder committed in 2006 and originally sentenced in 2010).

* * *