

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICIA LYNN ROOSA — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PATRICIA LYNN ROOSA DC#V33283
(Your Name)

LOWELL CORRECTIONAL INSTITUTION-ANNEX
11120 N.W. GAINESVILLE ROAD
(Address)

OCALA, FLORIDA 34482
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- A. IF CHRONOLOGICAL AGE IS NOT THE ONLY FACTOR OF YOUTH, IS IT CONSTITUTIONAL TO DISFAVOR ANY PART OF THE DEFINITIVE BRAIN DEVELOPMENT CLASS OF PEOPLE?

*

- B. IS IT UNCONSTITUTIONAL TO AUTOMATICALLY SENTENCE A NINETEEN (19) YEAR OLD TO LIFE WITHOUT PAROLE HWEN RESEARCH SHOWS THAT THE BRAIN IS NOT FULLY DEVELOPED UNTIL THE AGES OF 18-22, RELYING ON THE SAME SCIENTIFIC STUDIES USED TO DETERMINE MILLER V. ALABAMA, 132 S. CT 2455 (2012)?

*

- C. SHOULD A JURY DECIDE WHETHER YOUNG ADULTS RECEIVE THE OTHER DEATH PENALTY SENTENCE (LIFE WITHOUT PAROLE) OR A TERM OF YEARS, TO PREVENT DISPROPORTIONATE PUNISHMENT AND OFFER AN OPPORTUNITY FOR REHABILITATION, AND SINCE THERE IS NO CHANCE FOR THOSE BETWEEN 18-21 TO PRESENT MITIGATING CIRCUMSTANCES BEFORE THEY ARE AUTOMATICALLY GIVEN LIFE WITHOUT PAROLE?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B, C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the STATE TRIAL COURT court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was August 1, 2017. A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: September 14, 2017, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

EIGHTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

FLORIDA STATUTES 958.04

STATEMENT OF FACTS

The Petitioner is currently serving a term of imprisonment of three (3) natural life sentences, and two (2) and five (5) year sentences, all running concurrent, imposed by the seventh judicial circuit, in and for Flagler County, Florida. The Petitioner was charged and indicted for first degree murder, home invasion robbery, kidnapping, conspiracy and burglary for a crime that occurred on January 7, 2007, **when she was nineteen years old.** The Petitioner proceeded to a non-jury trial on May 18-26, 2009, before the Honorable Judge Kim C. Hammond. On May 26, 2009, she was found guilty of all charges, and automatically sentenced without the ability to present mitigating factors, and though she was not the actual perpetrator. Counsel at trial and sentencing were Thomas R. Mott and J. Peyton Quantess. The Petitioner appealed her cause which was affirmed on July 27, 2009. The Petitioner thereafter the motion which is currently the cause of this proceeding, a 3.850 alleging that was entitled to be re-sentenced under Miller v. Alabama, 132 S.Ct. 2455 (2015) and Montgomery v. Louisiana, 135 S.Ct. 718 (2016), which was denied by the trial court on May 17, 2017. The Appellant appealed the decision which was denied on August 11, 2017. The Petitioner filed a motion for rehearing which was denied on September 14, 2017.

This Petition is timely where it is filed within 90 days of that date.

REASON FOR GRANTING THE PETITION

A. IF CHRONOLOGICAL AGE IS NOT THE ONLY FACTOR OF YOUTH, IS IT CONSTITUTIONAL TO DISFAVOR ANY PART OF THE DEFINITIVE BRAIN DEVELOPMENT CLASS OF PEOPLE?

In the evolving standards of decency today the Honorable U.S. Supreme Court has made remarkable steps forward to reflect our maturation in cases dealing with youth and crime.¹ In these cases the Honorable Court has accepted a steady influx of studies that expound upon brain development.²

In Atkins v. Virginia, 536 US 304, 153 L Ed 2d 335, 122 S Ct 2242, the death penalty and mental retardation were addressed, and the opinion resulted that those that fell within the class of mentally retarded could not be executed. The opinion included explanations on this class of people that have a developmental age that is measured and cataloged.

¹ See Miller v. Alabama 567 U.S. 460; Graham v. Florida 560 U.S. 48; Eddings v. Oklahoma, 455 U.S. 104, 110-112, 102 S. Ct. 869, 71 L. Ed. 2D 1 (1982); D.B. v. North Carolina, 131 S. Ct. 2394, 2407, 180 L. Ed. 2D 310 (2011); Montgomery v. Louisiana 136 S. Ct. 718; Roper v. Simmons 543 U.S. 551; Workman v. Commonwealth, 429 S.W.2d 374; Johnson v Texas, 509 U.S. 350, 113, S.Ct.2658, 125 L.ED. 2D 290 (1993)

² See Brief of Amici Curiae, J Laurance Aber; Less Guilty by Reason of Adolescence, L. Steinburg and E.S. Scott; Adolescent Development and Juvenile Justice by L. Steinburg

Unlike the mentally retarded, the adolescent brain development class of people is in a group of people that are defined by a definitive end point that needs no calculations or tests, and needs no expert to figure out if someone falls within the class. A child's brain ceases to grow in the mid-twenties.³ It is cruel and unusual punishment to subject only a portion of this adolescent brain development class to reasonable opportunities for release and not the rest of the class.

In Montgomery the Honorable U.S. Supreme Court made clear that; “A claim that punishment is excessive is judged not by the standards that prevailed in 1685 when Lord Jeffrey’s presided over the “Bloody Assizes” or when the Bill of Rights was adopted, but rather by those that currently prevail. As Chief Justice Warren explained in his opinion in Trop v Dulles, 356 US 86, 2 L Ed 2d 630, 78 S Ct 590 (1958): “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society” *Id.*, at 100-101, 2 L Ed 2d 630, 78 S Ct 590” quoting Atkins. Our standards of decency are defined in the level of where we draw lines in our progression. As of this moment in time we know that the age of **21** is the age where society’s progress makes adult life jeopardizing

³ See Footnote Number 2

choices, not 18. By cutting out a clear class of people is a violation of substantive law. In Montgomery “Substantive constitutional rules include “rules forbidding criminal punishment of certain primary conduct” and “rules prohibiting a certain category of punishment for a class of defendants because of their status or offense,” Penry v. Lynaugh, 492 U.S. 302, 330, 109 S. Ct. 2934, 106 L. Ed. 2D 256”. The ages of 18-21, at minimum are included in the adolescent brain development class of people in Miller. It is a violation of the 8th and 14th Amendments to exclude them. In Montgomery “Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only **transient immaturity**-and who have since matured-will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.” The transiiveness of youth is definitive by the development which is too clear in the research and the law; the ages of **18-21** are definitively inclusive to this class of adolescent brain development class of people.

It is well known that sanctioning adolescents as adults is counterproductive⁴ and can actually be the cause for an increase in recidivism. Also widely known is that handling adolescents with juvenile sanctioning can **reduce** re-arrests.

To deprive an entire portion of the same class of people is cruel and unusual punishment and against equal protection.

The law marks the legal drinking age as **21** years old in the Nation. In **Miller** the court notes, “In many States, for example, a child convicted in juvenile court must be released from custody by the age of **21** (See, {567 U.S. 489} e.g., Ala. Code 12-15-117(a) (Cum. Supp. 2011); also see generally 2006 National Report 103 (noting limitations on the length of juvenile court sanctions))”.

Being that the legal drinking age is **21** years old. The age of **21** is the irrefutable hallmark, by society, the age where youth can begin to make adulthood decisions, in the sense of other people and their lives. Even car rental companies

⁴ See Adolescent Development and Juvenile Justice by L. Steinburg, pg. 65-68 “Impact of Punitive Sanctions on Adolescent Development and Behavior”

know this.⁵ And it is not coincidence that most trust funds are not in control of a child until about 25 years old, if not older.

The decision to erroneously exclude a distinctive portion of a class of people, especially where the portion suffers from the same characteristics that are protected by law and it is acknowledged by the law, that youth cannot make good decisions in the face of **life jeopardizing** choices until at least the age of **21** years old.

It is cruel and unusual punishment that the law condemns a **21** year old as an adult yet knows, in societies developmental evolution, that the **same youth** is so 'young' and 'adolescent' that they cannot be trusted to **drink and make good choices**. In this country we have had a rash of hazing deaths and incidents in the midst of the 18-25 year old age range excluded by the Honorable U.S. Supreme Court. It is unthinkable that these youth, in the beginning of their lives, in college, but still surrounded by peers that they are pressured by can now in light of all the substantive research⁶, be held in the same category as those fully brain developed

⁵ See TELL ME MORE; Brain Maturity Extends Well Beyond Teen Years an NPR interview with Neuroscientist Sandra Aamodt, co-author of "Welcome to Your Child's Brain; How the Mind Grows from Conception to College", discussing the precise brain development changes that happen between the ages of 18-25

⁶ See Footnote Number 2

adults who are irredeemable or as in Miller “well formed” and “irretrievable depravity”. How fair is it to expect an adolescent to make the decisions of a 30 year old, when their brain has still not fully developed.

In Florida, and many other States, acknowledges and already covers the youthful status in the age range of 18-**21**⁷(Formally 18-24) in a youthful offender Statute. This again legally acknowledges the interim of adulthood that is not lost on the legal system filled with adults. It is this same system that should be protecting these youths by doing what is best for them, which is *not* long term incarceration in a prison system⁸ that does not focus on reform, and condemn them. The Statute covering youthful offenders provides for only those youth that are not life or capital felonies⁹ and ignores this portion of adolescents that cannot make **any** better decisions than their compatriots. The adolescent brain development between the ages of 18-**21** are still in the plastic and less fixed stages¹⁰ of development that can attest the transiiveness of youth, as well as any other adolescence. To exclude this continued underdeveloped age range, class of people,

⁷ See Fl. Statute § 958.04 Judicial disposition of youthful offenders.

⁸ See Footnote Number 4

⁹ See Fl. Statute § 958.04 (b) Judicial disposition of youthful offenders.

¹⁰ See Footnote Number 2

is against the 8th Amendment barring cruel and unusual punishment and the 14th Amendment barring differential treatment.

In Miller, the factor of chronological age is addresses everything said in Roper and Graham about that stage of life also appears in these decisions. As we observed, “youth is more than a chronological fact” Eddings. It is a time of immaturity, irresponsibility, “impetuousness, and recklessness” Johnson. It is a moment and “condition of life when a person may be most susceptible to influence and to psychological damage” Eddings. And its “signature qualities” are all “transient” Johnson. Eddings in this instance is especially on point. There, a 16-year-old shot a police officer point-blank and killed him. We invalidated his death sentence because the judge did not consider evidence of his neglectful and violent family background (including his mother's drug abuse and his father's physical abuse) and his emotional disturbance. We found that evidence “**particularly relevant**”--more so than it would have been in the case of an adult offender. We held: “Just as the chronological age of a minor is itself a relevant mitigating factor of great weight, **so must** the background and **mental and emotional development** of a **youthful defendant** be duly considered” in assessing his culpability.

It is known and accepted that developed brains do change for the better. In Miller, the Honorable U.S. Supreme Court said; “And in Graham, we noted that

“developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”--for example, in “parts of the brain involved in behavior control.” We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences--both lessened a child's “moral culpability” and enhanced the prospect that, as the years go by and neurological development occurs, his “**deficiencies will be reformed**”(quoting Roper,)” quoting Miller. It is a factor of youth that the courts are now accepting but has always known. Transit implicates that any youth can benefit from reform. The development of the brain is still in transit until the mid-twenties¹¹ and to discount a portion of this adolescent brain development class of people is bias.

The legal age to vote is 18, a first acceptance of free expression. Those on the cusp of adulthood get to be heard with an act that cannot harm anyone else. At 18 one can sign up to defend their country. But what military faction would place the lives of an entire platoon in a child's hands. Do not the military **under supervision** groom those enlisted for adulthood, teaching them impulse control, discipline, responsibility and structure, instead of handing over a weapon and giving anyone free range. Do those still developing their brain learn how to be a ‘better’ person, the military even instills integrity **under this supervision**. Here,

¹¹ See Footnote Number 2

the military is a safe environment in which an 18 year old can complete the transition from youth and its characteristics into adulthood **under supervision**.

But one cannot at 18 choose to buy an alcoholic drink, get drunk, and choose to (or not) get into a vehicle and drive. Adolescents are untrustworthy until **21** years old when it comes to social standards that expect the adult-like decision of drinking excessively and driving. One would think it obvious that the law knows the forces of pressure out there against this last transition of youth. That between the ages of **18-21** or 18-24 that decision making capacity that separates youth from adult is so fundamentally different that the entire nation does not trust them to make the right choice when other peoples lives are factored in. Choices that we now know are crippled with handicaps of transit adolescent characteristics. In **Miller** these characteristics are noted as: 'lack of maturity and an underdeveloped sense of responsibility,' "leading to recklessness, impulsivity, and heedless risk-taking" quoting **Roper**. Second, children "are more vulnerable to negative influences and outside pressures," including from their family and peers; they have limited "control over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievable depravity, "incorrigibility is inconsistent with

youth” quoting Workman v. Commonwealth, 429 S.W. 2d 374 (Ky. App. 1968). And for the same reason, rehabilitation could not justify that sentence. Life without parole “forfeits altogether the rehabilitative ideal” Graham. It reflects “an irrevocable judgment about [an offender's] value and place in society,” at odds with a child's capacity for change.

As **21** is the Nations evolved standards of decency in trust with life jeopardizing decisions, because of brain development, the law must recognize that it is an impossible expectation to expect an **18-21** year old to make life jeopardizing decisions in a criminal setting just because its criminal . In fact with all that the research¹² has proven, it is impossible for an underdeveloped brain to make the best choice under pressure or have the capacity to resist as an adult with a fully developed brain does. Therefore the ages of **18-21** should not be excluded, but given just and due re-consideration.

Being so it is **this fact** of transit youth, beyond all these facts should include, at minimum, the ages of **18-21** into the adolescent brain development class of Miller and receive ample and meaningful opportunity for release as the rest of the class of adolescent brain development.

¹² See Footnote Number 2

B. IS IT UNCONSTITUTIONAL TO AUTOMATICALLY SENTENCE A NINETEEN (19) YEAR OLD TO LIFE WITHOUT PAROLE WHEN RESEARCH SHOWS THAT THE BRAIN IS NOT FULLY DEVELOPED UNTIL BETWEEN THE AGES OF 18-22, RELYING ON THE SAME SCIENTIFIC STUDIES USED TO DETERMINE MILLER V. ALABAMA, 132 S.CT 2455 (2012)?

According to Miller, the Eighth Amendment's prohibition against cruel and unusual punishment guarantees individuals the right to be free from excessive sentences. The United State's Supreme Court relied on the decision of Roper v. State, 125 S.Ct. 1183, in which it agrees that that right "flows from the basic precept of justice that the punishment for a crime should be graduated and proportioned to both the offender and the offense."

Miller is based on the fact that the youth have diminished culpability and greater prospect of reform and that studies give scientific proof that the brain is not fully developed until the mid-twenties. Miller relies on three arguments to support this concerning the youth:

1. A lack of maturity and under developed sense of responsibility leading to recklessness, impulsivity, and heedless risk taking;
2. They are more vulnerable to negative influences and outside pressures; have limited control over their own environment and lack the ability to extricate themselves from horrific, crime producing settings;

3. Their character is not as well formed as an adult's, their traits are "less fixed", their "actions less likely to be evidenced of irretrievable depravity".

Miller asserts: "By making youth (and all that accompanies it) irrelevant to imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment."

Life without parole swears altogether incorrigibility is inconsistent with the youth, yet Miller corrects that. All this is consistent with the age of 18-21 applying to this ruling, which is consistent with the Petitioner's age.

Miller also shows that developments in psychology and brain science continue to show fundamental differences in the brain, between youth and adults, those parts of the brain that involve behavior control. Roper, Graham v. Florida, 130 S.Ct. 2011 (US 2010), and Miller as they evolved, all relied upon age and studies of the brain. The actual studies show that the brain is not fully developed until the mid-twenties. As noted, Miller takes guidance in the evolving standards of decency that mark the progress of a maturing society. This Honorable Court asserted that an offender's age is relevant to the Eighth Amendment and so criminal procedure laws that fail to take a defendant's youthfulness into account at all would be flawed. Asserting that life without parole conflicts with the aspects of our Eighth Amendment. The Florida Courts even decided in Cooper v. State, 739

So.2d 82 (Fla. 1999), that the age of eighteen (18) and brutal childhood could be used as mitigating circumstances.

Miller relied on the decision to Graham, that society has long understood that adolescents lack the experience, perspective, and judgment expected. Miller relied on the studies of the brain asserted in Graham. These same studies are relied upon in the Petitioner's case asserting that Miller is applicable to her cause. Medical research and scientific studies continue to confirm that the human brain development occurs in distinct phases, with critical immaturities in judgment persisting throughout adolescence. In particular, the brains frontal lobes are developing throughout the teen years.

Numerous studies show that the brain is not fully developed until the early twenties. Sandra Aamodt, neuroscientist and co-author of the book **"Welcome to your Child's Brain"**, has done research which asserts that the critical parts of the brain shown through brain scans prove that the brain is not fully finished developing until the age of twenty-five (25). Important changes occur in the pre-frontal cortex, between the ages of eighteen (18) and twenty-five (25), which is the part of the brain that helps you to inhibit impulses and to plan and organize your behavior. Change in the reward system cause adolescents and young adults to become more sensitive to peer pressure.

Laurance Steinberg does studies for Temple University in the Department of Psychology and has asserted that neurobiological maturity is reached at least by the time you have reached twenty-two (22). The MacArthur Foundation Research Network on Adolescent Development and Juveniles sponsored a large scale study of individuals between the ages of eleven (11) and twenty-four (24). There were no differences between sixteen (16) and seventeen (17) year olds and young adults. Brain Maturation continues well into young adulthood, most do not attain adult like levels of social and emotional maturity until the early adulthood.

Miller's reliance on these studies which show that the brain is not fully developed until the twenties and the use of this in holding an automatic life sentence without Parole, to be in violation of the Eighth Amendment should be applied to the Petitioner's cause. The Petitioner was nineteen (19) years old when her crime was committed. And according to the studies used in Miller, Graham, Montgomery and Roper this was a critical time of brain development. The Petitioner's brain was no different than that of a seventeen (17) year old, which Miller applies.

Being nineteen (19) does not change the brain from that of a juvenile into an adult, so Miller is to be applied to the Petitioner.

It is vital that this Honorable Court address the Petitioner's questions. This effects other youths similarly situated, who received a Life sentence without parole for a crime committed in their youth when their brains had not been fully developed. Those who were eighteen (18) and not considered juveniles yet still are juveniles in their brain development. This Honorable Court should address this claim.

C. SHOULD A JURY DECIDE WHETHER YOUNG ADULTS RECEIVE THE OTHER DEATH PENALTY SENTENCE (LIFE WITHOUT PAROLE) OR A TERM OF YEARS, TO PREVENT DISPROPORTIONATE PUNISHMENT AND OFFER AN OPPORTUNITY FOR REHABILITATION, SINCE THERE IS NO CHANCE FOR THOSE 18-21 TO PRESENT MITIGATING CIRCUMSTANCES BEFORE THEY ARE AUTOMATICALLY SENTENCED TO LIFE WITHOUT PAROLE?

The Eight Amendment of United States Constitution bars an excessive sentence as cruel and unusual. The punishment for an offense must meet that proportionate sentence for that age. The only way that a life sentence without parole, which is considered the other death penalty, should be given for an

offender who is between the ages of 18-21, is if a jury considers all mitigators and aggravators as is required for death penalty cases. As it stands, age is not taken into consideration when determining the greatest sentence given, besides death, life without parole. Yet, age is one of the mitigating factors used in a jury's determination of whether an individual receives the death penalty.

In Altersberger v. State, 216 So. 3d 621 (2013) in determining the death penalty the Court found as follows: **“the trial court also found the following mitigators: (1) Altersberger was 19 years old at the time of the murder; (2) Altersberger's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired (moderate weight); (3) the offense was committed in an unsophisticated manner (very, very slight weight); (4) Altersberger was under the influence of alcohol at the time of the offense (little weight); (5) Altersberger had a long-term history of substance abuse from age 15 (very slight weight); (6) Altersberger was brought up in a dysfunctional family and home environment (moderate weight); (7) Altersberger loves and is valued by his family (very slight weight); (8) Altersberger loved his grandfather and was devastated by his death (very slight weight); (9) Altersberger was the victim of racial discrimination within his own family (little weight); (10) Altersberger**

maintained good behavior throughout the proceedings (very slight weight); and (11) Altersberger [pled] guilty and took responsibility for the offense (little weight)."

In the Petitioner's case, weighing the aggravators and mitigators and determining an appropriate sentence, the mitigating circumstances far outweighed aggravating circumstances. This Honorable Court has held the same in Smith v. Texas, 543 US 37, 160 L Ed 2d 303, 125 S Ct 400 (2004): **"The accused presented to the jury mitigating evidence that (1) he had been diagnosed with potentially organic learning disabilities and speech handicaps at an early age; (2) he had a verbal IQ score of 75 and a full IQ of 78 and, as a result, had been in special education classes throughout most of his time in school; (3) despite his low IQ and learning disabilities, his behavior at school had often been exemplary; (4) his father was a drug addict who was involved with gang violence and other criminal activities, and regularly stole money from family members to support the drug addiction; and (5) he was only 19 years old when he committed the crime."**

As this Honorable Court has said in Roper, a sentence of life without the possibility of parole is akin to the death penalty, serving as the most severe punishment that can be lawfully imposed on a young adult offender. In **Graham** and Miller this Honorable Court further likened life without parole for young adults to the death penalty itself. And since the Eighth Amendment prohibits the state from imposing a life sentence on a juvenile and in accordance with the Graham-Roper-Miller line of decisions, it was made clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for young adults.

Here in Florida the judge makes the determination along with allowing the lead detectives to testify to what they believe about an accused in most mitigating hearings. But what of the judge whom is emotionally attached to the case, who makes biased calls and prohibits and/or block an accused motions, objections, and/or petitions to the court. It should be a requirement that a jury hears and decides upon the mitigating or aggregating circumstances. A jury of 12 is most likely not ruling and deciding based on emotion and not as biased as one person.

Although there is not as of now a stipulation that a jury weigh any mitigating factors for any person whose sentence is punishable by life, whether young adult or adult; if a jury could weigh the factors as they do in death penalty cases, it relieves

the court from automatically sentencing any accused to life without first weighing mitigators and aggravators. It does not exclude the punishment from existence, but however coincides with the Eighth Amendment's proportionality concerns, its ban on cruel and unusual punishment, and due process of law. If an underdeveloped brain has been received and recognized that it is not fully developed until the mid-twenties then surely the Eighth Amendment encompasses the class of 18-21 year old offenders to be included under the shelter of Miller, Roper, Graham and Montgomery. A seventeen years old brain does not fully develop in one hour after turning eighteen years old, so nor can a twenty-one year old brain be compared to a twenty-five year olds brain that is fully developed and functioning like an adult. The Eighth Amendment encompasses the class of 18-21 young offenders and to deny them the same rights and protections as the rest of the underdeveloped brain class of people goes against what the Fourteenth Amendment guarantees, and for what the justice system was built upon.

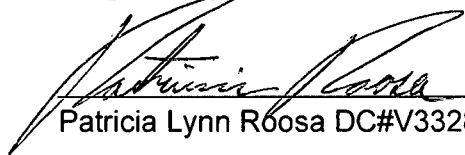
There should be a stipulation in cases for those who commit there crimes between the ages 18-21, and are facing a natural life sentence. This should include a jury determination of whether the individual qualifies to receive a natural life sentence or a term of years as the same as other undeveloped brain class of people. This Honorable Court should address this issue in its entirety giving full weight to

all the research provided in Miller, Roper, Graham, Montgomery and any newly developed research.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Patricia Lynn Roosa DC#V33283

Date: November 17, 2017

LOWELL CORRECTIONAL INSTITUTION-ANNEX
11120 N.W. GAINESVILLE ROAD
OCALA, FLORIDA 34482