No. 24-

In the Supreme Court of the United States

DAMON PETERSON,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether a Certificate of Appealability should have issued because reasonable jurists would find debatable or wrong the district court's conclusion that the Eighth Amendment permits a mandatory life-with-parole sentence for a juvenile offender when the state parole commission has determined that based solely on static factors related to the crime itself, the juvenile will not be paroled within his natural life expectancy.

2) Whether a Certificate of Appealability should have issued because reasonable jurists would find debatable or wrong the district court's conclusion that there is no Fourteenth Amendment due process right, once a state has set up a parole system, to a non-arbitary and non-capricious parole commission decision which considers an offender's juvenile status at the time of the crime and demonstrated post-crime rehabilitation as factors as to whether he should be released prior to his natural life expectancy.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case. The State of Florida and the State Attorney's Office for the Eleventh Circuit of Florida (in addition to the Secretary of the Florida Department of Corrections who is incarcerating Mr. Peterson) prosecuted this case and have an interest in the outcome.

RELATED PROCEEDINGS

- *State of Florida v. Damon Peterson*, No. F93-10518B, Eleventh Judicial Circuit of Florida. Judgment entered June 25, 2019.

- *Damon Peterson v. State of Florida*, No. 3D19-1389, Third District Court of Appeal, State of Florida. Judgment entered February 24, 2021.

- *Damon Peterson v. Florida Department of Corrections*, No. 1:22-cv-20738, United States District Court, Southern District of Florida. Judgment entered May 29, 2024.

- *Damon Peterson v. Secretary, Florida Department of Corrections*, No. 24-12159, United States Court of Appeals for the Eleventh Circuit. Judgment entered December 19, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Damon Peterson petitions the Supreme Court of the United States for a writ of certiorari to review the order denying a Motion for Certificate of Appealability from the United States Court of Appeals for the Eleventh Circuit, entered in *Damon Peterson v. Secretary, Florida Department of Corrections*, No. 24-12159 (December 19, 2024).

OPINIONS BELOW

The Florida trial court decision denying the Motion to Correct Illegal Sentence was not reported and appears as Appendix D, Appendix pages 27a-28a. The Florida intermediate appellate court decision affirming the denial of the Motion to Correct Illegal Sentence is reported at *Peterson v. State*, 317 So.3d 214 (Fla. 3rd DCA 2021) and appears as Appendix C, Appendix pages 25a-26a. The federal district court order denying the petition for writ of habeas corpus is not reported in an official reporter and is reported by Lexis at *Peterson v. Fla. Dep't of Corr.*, 22-cv-20738, 2024 U.S. Dist. LEXIS 95400 (S.D. Fla. May 29, 2024). It appears at Appendix B, Appendix pages 3a-24a. The Eleventh Circuit order denying a Certificate of Appealability is not reported in an official reporter or via Lexis. It appears at Appendix A, Appendix pages 1a-2a.

JURISDICTION

The decision of the U.S. Court of Appeals for the Eleventh Circuit was entered on December 19, 2024. This petition is being filed 90 days after that date. This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eleventh Circuit had jurisdiction under 28 U.S.C.

§ 1291. The District Court had jurisdiction under 28 U.S.C. § 2254(a).

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section I of the Fourteenth Amendment provides "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Damon Peterson was 16 years old in 1993 when he was charged with the Florida crime of first-degree felony murder. The case was a botched armed robbery where the victim was shot and killed. He was also charged with various non-homicide crimes. The State never alleged Mr. Peterson intended to kill the victim, which is why the main crime was charged as felony murder rather than premeditated murder.

Mr. Peterson entered a plea in exchange for a life sentence with the possibility of parole after 25 years. This was a mandatory penalty in Florida for first-degree murder—the only sentencing options were the

death penalty or life with eligibility for parole after 25 years, with no exception for juveniles or consideration of the age of the offender. Fla. Stat. § 775.082(1) (1993).[1] Mr. Peterson pled to life (the only possible sentence other than the death penalty that could have been imposed after trial) in exchange for the State waiving the death penalty, which at the time was a possible sanction for 16-year-olds but since has been recognized as unconstitutional cruel and unusual punishment when applied to juveniles. *Roper v. Simmons*, 543 U.S. 551 (2005).

The year after this crime, 1994, Florida abolished parole. The only offenders still serving parole-eligible sentences in Florida committed their crimes before 1994. Juveniles sentenced to life without parole post-1994 have already had their sentences modified pursuant to this Court's decisions in *Graham* and *Miller*.

The Parole Decision

Mr. Peterson remains in Florida state prison serving this mandatory life sentence imposed for crimes he committed when he was 16 years old. He is now 48, meaning two-thirds of his life has been spent behind bars. Per the Florida Commission on Offender

[1] After this Court's *Miller* and *Graham* decisions, the Florida legislature amended this statute and it now provides for an individualized sentencing process that accounts for the juvenile status of the offender and includes judicial review of lengthy or life sentences after specified periods. Fla. Stat. §§ 775.082(1)(b), 921.1402 (2025). These statutory changes do not apply to Damon Peterson and he is serving a mandatory life sentence with (supposed) parole eligibility after 25 years which the sentencing court was required to impose regardless of his juvenile status.

Review, he will not be released on parole until 2060 at the earliest, when he would be 84. All but five years of that release date were calculated due to static factors relating to the crime, meaning under Florida's system he could not be released until 2055 at the earliest regardless of his post-crime behavior and rehabilitation. In 2055 Mr. Peterson would turn 79, which is past the average American life expectancy, let alone the life expectancy of a Black man who has spent his entire adult life in prison.[2] The Florida Commission on Offender Review has memorialized this decision,[3] thus making it beyond dispute that Mr. Peterson is being imprisoned beyond his natural life expectancy based solely on static factors relating to the crimes committed rather than any post-crime rehabilitation or lack thereof. His presumptive parole release date is in 2060, and only 60 months (5 years) of that calculation is accounted for by any post-crime behavior.[4]

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[2] According to the Social Security Administration, the natural life expectancy of an American male born in 1976 like Mr. Peterson is 69.1 years. https://www.ssa.gov/OACT/TR/TR02/lr5A3-h.html. According to the Centers for Disease Control, for Black men born in 1975 it is 62.4 years. https://www.cdc.gov/nchs/data/hus/2017/015.pdf "Life expectancy within federal prison is considerably shortened." *United States v. Tavares*, 436 F.Supp.2d 493, 500 (E.D.N.Y. 2006).

[3] The Commission overruled a parole examiner's recommendation that Mr. Peterson be released in 2027, by adding many additional months than the parole examiner added for static factors relating to the crimes as well as adding 5 years for unspecified "unsatisfactory institutional conduct".

[4] Mr. Peterson's prison disciplinary record has been exemplary and his rehabilitation comprehensive. Although Petitioner disagrees with the parole commission's decision to add these 60 months for "unsatisfactory institutional conduct", he does not

Therefore, even in the absence of "unsatisfactory institutional conduct as evidenced by his processed disciplinary record", he would not be released until 2055 based solely on static factors. The parole commission action and explanation, memorialized in a two-page Presumptive Parole Release Date Commission Action form which was part of the record at every stage below, is reproduced below:

I. Commission Investigator's Recommendations

A. Eligible for parole consideration: **yes**
B. Salient Factor Score: **1**
C. Offense Severity: **6** Case No. **93-10518 First Degree Murder**
D. Matrix Time Range: **90-135 YO (set at top of range).**
E. Aggravating/Mitigating Factors (*Explain with each source):*
   1) Multiple Separate Offenses: Case #93-10518, Count 2: Attempted Armed Robbery (2F): **(+25 months)**
   2) Multiple Separate Offenses: Case #93-10518, Count 3: Unlawful Possession of a Firearm While Engaged in a Criminal Offense (2F): **(+24 months)**
   3) Multiple Separate Offenses: Case #93-12155, Count 1: Burglary with Assault or Battery Therein While Armed (LIFE): **(+100 months)**

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seek judicial review of this aspect of the parole decision and bases his constitutional claims solely on the fact that the static factors will not allow release until 2055 at the earliest.

4) Multiple Separate Offenses: Case #93-12155, Count 3: Shooting or Throwing Deadly Missile (2F): **(+24 months)**

5) Multiple Separate Offenses: Case 93-12155, Count 4: Aggravated Assault with a Firearm (3F): **(+20 months)**

6) Multiple Separate Offenses: Case #93-12155, Count 5: Possession of Burglary Tools (3F) **(+20 months)**

7) The offense involved the use of a firearm, a .38 caliber semi-automatic pistol, source: Post Sentence Investigation **(+60 months)**

F. Time Begins: **4/13/1993**

G. Months Recommended: **408**

H. Recommended Presumptive Parole Release Date: **4/13/2027**

II. Commission Action

[A-C omitted as irrelevant]

D. The Commision does NOT affirm the commission investigator's recommended presumptive parole release date and restructures the case as follows:

1) Salient Factor Score: **1**

2) Offense Severity: **Level 6** Degree: **Capital Felony** Offense: **Ct. 1 First Degree Murder Case No. 93-10518**

3) Matrix Time Range: **90-135 (Youthful Offender)** Set at: **135 months**

4) Aggravating/Mitigating Factors (explain each with source):

1. Multiple separate offense Case #93-10518 Ct. 2 Attempted Armed Robbery. **120 months**

2. Multiple separate offense Case #93-10518 Ct. 3. Unlawful Possession of a Firearm While Engaged in a Criminal Offense. **72 months**

3. Multiple separate offense Case #93-12155 Ct. 2 Armed Robbery. **180 months**

4. Multiple separate offense Case #93-12155 Ct. 3 Shooting or Throwing a Deadly Missile. **120 months**

5. Multiple separate offense Case #93-12155 Ct. 4 Aggravated Assault with a Firearm. **60 months**

6. Multiple separate offense Case #93-12155 Ct. 5 Possession of Burglary Tools. **60 months**

7. Unsatisfactory institutional conduct as evidenced by his processed disciplinary record. **60 months**

5) Time Begins: **4/13/1993**

6) Months for Incarceration: **807 months**

At the Commission meeting held on 12/20/2017 your Presumptive Parole Release Date was ESTABLISHED to be 7/13/2060. You will be reinterviewed for your subsequent interview during the month of August, 2024.

The Commission finds that your next interview date shall be within **7 years** rather than within **2 years**, from your last interview based on your conviction/sentence for **First Degree Murder** and the

Commission's finding that it is not reasonable to expect you will be granted parole during the following years. The basis for the finding is as follows.

1. Unsatisfactory institutional conduct
2. Use of a firearm
3. Unreasonable risk to others
4. Multiple separate offenses

***The Commission considered mitigation**

Thus, it is apparent from the record of the parole commission's decision that: a) the commission rejected the conclusions of the examiner who, unlike the commission, actually interacted with Mr. Peterson and imposed a presumptive parole release date 33 years later than the parole examiner; b) the commission's findings were entirely based on the facts of the crime except for 60 months for unsatisfactory institutional conduct; and c) the points/months assigned for various crimes are arbitrarily applied in the parole commission's discretion and in contravention of basic notions of proportionality, since i) the same offenses resulted in vastly different scores from the parole examiner and the parole commission; and ii) a separate armed robbery case Mr. Peterson also committed as a 16-year-old where nobody was physically injured was scored more severely (520 months total) than the first-degree murder case (327 months total)

Procedural History

After this Court decided *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 567 U.S. 460 (2012), the Florida Supreme Court decided *Atwell v. State*, 197 So.3d 1040 (Fla. 2016). *Atwell* squarely

applied to Mr. Peterson, finding Florida juvenile life-with-parole sentences unconstitutional. He therefore filed, in 2016, a state Motion to Correct Illegal Sentence pursuant to Florida Rule of Criminal Procedure 3.800 arguing his juvenile life sentence was unconstitutional. The State agreed the sentence was illegal pursunt to *Atwell* but convinced the state trial judge, over defense objection, to wait to resentence Mr. Peterson until the parole commission reviewed his case in 2017, ultimately rendering the parole decision reproduced above. After the parole decision, the State said on the record that they would be offering a plea to a term of years to resolve the case, negotiations occurred, significant mitigation was presented, and experts evaluated Mr. Peterson and concluded he was of very low risk to reoffend. The State never actually extended a plea. Days before the resentencing was set to occur, the Florida Supreme Court overruled their *Atwell* decision in *Franklin v. State*, 258 So.3d 1239 (Fla. 2018), stating that "Florida's statutory parole process fulfills *Graham*'s requirement that juveniles be given a 'meaningful opportunity' to be considered for release during their natural life based upon 'normal parole factors', as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review."

The State therefore argued that based on *Franklin*'s interpretation of this Court's jurisprudence relating to juvenile life sentences, Mr. Peterson's sentence was lawful. The defense argued that the sentence was still illegal under the Eighth Amendment pursuant to *Miller* and *Graham*, as the parole documents were conclusive evidence that this particular juvenile life

sentence contained no possibility of parole until 2055 based solely on static factors relating to the crime. Alternatively, although it believed this was clear from the face of the parole documents, the defense requested an evidentiary hearing to present evidence demonstrating the Commission was not "consider[ing] the individualized juvenile factors the US Supreme Court says needs to be done". To the defense, the parole documents demonstrated that the parole denial in this case was arbitrary and capricious in violation of the Fourteenth Amendment due process clause. The defense also argued that it was a Fourteenth Amendment equal protection violation to treat Mr. Peterson differently, and worse, than similarly situated juvenile offenders originally sentenced to life who were resentenced post-*Miller* and *Graham*.[5]

The Florida trial court denied the Motion to Correct Illegal Sentence in an unelaborated order. (App'x D, 27a-28a).

The defense appealed to the state intermediate appellate court, the Third District Court of Appeals. The defense again argued that *Miller* and *Graham* were violated by this sentence because Mr. Peterson had no meaningful opportunity for release during his natural life expectancy, due solely to static factors relating to the crime. The defense also raised the equal protection claim. The state intermediate appellate court affirmed without a written opinion but with citations to various Florida cases including *Franklin v. State*, 258 So.3d 1239, 1241 (Fla. 2018). App'x C, 25a-26a

[5] Petitioner does not pursue the equal protection claim before this Court.

Because the state intermediate appellate court did not issue a written opinion, there was no possibility of review by the Florida Supreme Court. *See Grate v. State*, 750 So.2d 625 (Fla. 1999).

Mr. Peterson then filed a timely Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in the Southern District of Florida. That petition argued that Mr. Peterson's Eighth Amendment right to be free of cruel and unusual punishment, and Fourteenth Amendment rights to due process and equal protection, were violated by the juvenile life sentence. *Graham* and *Miller*, Mr. Peterson argued, require a meaningful opportunity for release within a juvenile's natural life span, which Mr. Peterson was being denied. The Florida parole commission's decision was arbitrary and capricious because it provides no explanation or cabining of the points/months it added for various factors relating to the crime, and, for instance, punished Mr. Peterson more harshly for committing a separate armed robbery where nobody was injured than for the murder. The defense also raised the equal protection claim related to the other Florida juvenile life-sentenced inmates who were resentenced after *Graham* and *Miller*.

The federal district court denied the § 2254 petition in an order that accurately lays out the facts. App'x B, 3a-24a. The district court denied the Eighth Amendment claim finding that the holdings of *Miller* and *Graham* do not squarely apply to juvenile life-with-parole sentences and thus the state court's decisions were not an unreasonable application of those Supreme Court cases. App'x B, 10a-13a. The district court also found that despite the "seemingly arbitrary number of months that the Commission assigned to

various aggravating factors" App'x B, 14a, Mr. Peterson would continue to receive parole reviews every seven years and "the Commission has the discretion to change Petitioners PPRD [prospective parole release date] in the future". *Id.* Even if Mr. Peterson was deprived of a meaningful opportunity for release, the district court found, that would not be unconstitutional because *Miller* "does not forbid" sentences that are "functionally equivalent to life-without-parole". App'x B, 16a. Finally, the district court found that even if the parole board relied only on static factors about the crime in setting a release date beyond Mr. Peterson's life expectancy, this would not violate *Miller* because only sentencing judges, not parole boards, are prohibited from incarcerating a juvenile for life without an individualized consideration of their juvenile status. App'x B, 16a.

The district court denied the due process claim, finding that there is no protected liberty interest in receiving a parole release, and even if there were there was no clearly established federal law that arbitrary and capricious actions by a parole board violated due process. App'x B, 17a-21a

And the district court denied the equal protection claim, finding that the government had a rational basis to treat Mr. Peterson differently that "similarly situated defendants who were sentenced at different times under different sentencing regimes." App'x B, 21a-22a.

Mr. Peterson had alternatively asked for an evidentiary hearing in federal court to further develop his claim that he was being denied parole release within his natural life based solely on facts related to the crime. This was denied. App'x B, 22a-23a.

The district court denied a certificate of appealability, therefore finding that "reasonable jurists would [not] find the district court's assessment of the constitutional claims debatable or wrong." App'x B, 23a

Mr. Peterson timely moved for a certificate of appealability from the Eleventh Circuit Court of Appeals. He argued that reasonable jurists would disagree on the question of whether a juvenile life-with-parole sentence is unconstitutional where uncontroverted parole documents demonstrate the defendant will not be released within his natural life expectancy based solely on the facts of the crime. The defense cited multiple federal cases where judges had disagreed on this issue. The Eleventh Circuit issued an order denying the motion for certificate of appealability "because [Mr. Peterson] has failed to make a substantial showing of the denial of a constitutional right." App'x A, 1a-2a.

Mr. Peterson now timely moves this Court to grant a writ of certiorari.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari because this case squarely presents an issue directly implicated, but not specifically addressed, by *Graham* and *Miller*—what constitutional protections, if any, apply to a juvenile sentenced to life-with-parole when a state parole board sets a parole release date beyond that juvenile's life expectancy and memorializes that decision as being based entirely on static factors about the crime itself which the juvenile can never change? Reasonable jurists could disagree, and have

disagreed, on this question. Reasonable jurists could also find the district court's assessment of the constitutional claims raised debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). This Court should therefore exercise its certiorari jurisdiction to review the Eleventh Circuit's decision to deny a certificate of appealability on this question.

Miller and *Graham*

This Court, in *Graham v. Florida*, 560 U.S. 48 (2010) and then in *Miller v. Alabama*, 567 U.S. 460 (2012) created a sea change in how the American criminal justice system deals with children who commit serious felony offenses. Before, such as in 1993 when this case occurred, those children could be and often were treated just like adults. *Graham* and *Miller* say that is wrong because children are not just physically different from adults, they are also mentally and psychologically different. Their actual brains are different. *Miller* at 471-72. They lack maturity, have an "underdeveloped sense of responsibility", are "more vulnerable or susceptible to negative influences and outside pressures", and have characters that are "not as well formed". *Graham* at 68, *quoting Roper v. Simmons*, 543 U.S. 551, 575 (2005). Thus, their transgressions are "not as morally reprehensible as that of an adult". *Graham* at 68, *quoting Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). Life (without parole) sentences "mean[] denial of hope . . . that good behavior and character improvement are immaterial . . . that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." *Graham* at 70. *Graham* criticized juvenile life-without-parole

sentences because they "forswear[] altogether the rehabilitative ideal" that is the "penological goal that forms the basis of parole systems". *Miller* held the Eighth Amendment bars mandatory life without parole sentences even for juvenile murderers. The basic takeaway of these cases is that "[w]hat the State must do . . . is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham* at 75. "A state need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." *Id.* at 82.

The Constitution Forbids All Juvenile Sentences Which Were Imposed Without an Individualized Consideration of Juvenile Factors and Which Do Not Provide a Meaningful Opportunity to Obtain Release Within the Juvenile's Natural Life Expectancy.

These constitutional holdings, Petitioner suggests, apply to all juvenile offenders sentenced to life, whether or not they are technically parole eligible. The reason that life-with-parole sentences are presumptively constitutional for juveniles is because parole, by its very nature, allows for a meaningful opportunity for release upon demonstrated rehabilitation. But in this case the parole records demonstrate that Mr. Peterson has no such opportunity. He has been squarely told by the Florida Commission on Offender Review, in a document memorializing their decision, that he will not be released until 2055 at the earliest no matter what he has done or does in the future in prison.

That means this case presents a clean opportunity to decide the constitutional question of whether the holdings of *Miller* and *Graham* apply to all juvenile life sentences which do not afford a meaningful opportunity for release within the juvenile's natural life, regardless of whether that outcome is a result of a sentence imposed by a judge, a decision rendered by a parole board, or some combination. Juvenile life-with-parole sentences are constitutional so long as, and only so long as, they provide for a meaningful opportunity for release. States do not have to actually release juvenile offenders, but they cannot, consistent with the Constitution, foreclose the possibility of release upon demonstrated post-offense rehabilitation. They also cannot fail to consider a juvenile's youth at the time of the offense in making the release decision. Because Florida's parole system as applied in this case violates both of these principles, it is unconstitutional as applied in this case. Reasonable jurists interpreting this Court's decisions in *Graham* and *Miller* could so find, meaning the Eleventh Circuit erred in denying a certificate of appealability.

Federal habeas corpus relief lies when a state court decision is contrary to, or an unreasonable application of, clearly established federal law. 28 U.S.C. 2254(d)(1). Federal courts are not "require[d] to defer to the opinion of every reasonable state-court judge on the content of federal law. If, after carefully weighing all the reasons for accepting a state court's judgment, a federal court is convinced that a prisoner's custody . . . violates the Constitution, that independent judgment should prevail." *Williams v. Taylor*, 529 U.S. 362, 389 (2000).

Miller and *Graham* constitute clearly established federal law. And those decisions collectively hold that for children sentenced to life, a State must impose a sentence that provides some "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation". *Graham* at 50. "[M]andatory life without parole sentences for juveniles violated the Eighth Amendment." *Miller* at 470. There is no principled difference between a sentence that imposes life without the possibility of release pronounced by a judge and one where the juvenile is formally eligible for parole but the parole board states that, based solely on static factors related to the crime, he will not be eligible for release until a year post-dating his life expectancy. In both situations the juvenile has been informed by the State that he will not be released prior to his death behind bars—the only difference is which State actor is delivering this unfortunate news. The Constitutional right to be free of cruel and unusual punishment cannot plausibly depend on whether it is a judge or a parole board which determines that, based solely on the facts of the crime, a juvenile is ineligible for release within his natural lifespan. "[Y]outh matters" and for children "a lifetime of incarceration without the possibility of parole" constitutes cruel and unusual punishment. *Miller* at 473. Laws that mandate such a sentence "prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender" which "contravenes *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Miller* at 474. Florida's parole system as applied in

this case, the records clearly demonstrate, violates this Constitutional principle. Because the parole commission documents that Mr. Peterson will not be released until at least 2055 due to the crimes, no matter what his post-crime behavior was, is, or will be in the future, "the mitigating qualities of youth" and the "background and mental and emotional development of a youthful defendant" have not been considered. *Miller* at 476, *quoting Johnson v. Texas*, 509 U.S. 350, 367 (1993); *Eddings v. Oklahoma*, 455 U.S. 104, 116 (2012). "[T]his mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." *Miller* at 478.

The bottom line is "the Eighth Amendment forbids a **sentencing scheme** that mandates life in prison without possibility of parole for juvenile offenders". *Miller* at 479 (emphasis added). A state parole commission is a component of a state sentencing scheme. When, like here, that state parole commission follows state-created rules and guidelines to calculate a release date based solely on the facts of the crime which results in a juvenile offender being denied consideration for release prior to his natural life expectancy, the Eighth Amendment as interpreted by this Court has been violated. Sentencing must "consider[] an offender's youth and attendant characteristics". *Miller* at 483. Florida's parole system, as applied to Mr. Peterson, fails to comply with this requirement.

The Eleventh Circuit Erred in Denying a Certificate of Appealability on the Eighth Amendment Issue.

In considering a Motion for a Certificate of Appealability, the "court of appeals should limit is examination to a threshold inquiry into the underlying merit

of his claims." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). "[A] prisoner seeking a COA need only demonstrate 'a substantial showing of the denial of a constitutional right.' 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El* at 327. It appears that this Court reviews *de novo* whether a district court's decision was debatable. *Id.* Reasonable jurists could find that the district court decision in this case is "debatable or wrong", and that therefore the Eleventh Circuit erred in denying a certificate of appealability. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The best evidence for this is that reasonable jurists have in fact reached the opposite conclusion to the one the district court reached here.

In *Budder v. Addison*, 851 F.3d 1047 (10th Cir. 2017), the federal appellate court reviewed a habeas claim from an Oklahoma inmate that his juvenile life sentences violated the Eighth Amendment since state parole law provided that he would not be considered for parole for 131.75 years. Although Budder was formally parole eligible, he was not practically parole eligible as he would not be eligible for release within his lifetime. The State made the same argument there that the district court adopted here—*Miller* and *Graham* only apply to life-without-parole sentences, and thus definitionally do not apply to this life-with-parole sentence. *Budder* at 1056. The Tenth Circuit rejected this argument, stating "we cannot read the Court's categorical rule as excluding juvenile offenders who will be imprisoned for life with no hope of

release for non-homicide crimes merely because the state does not label this punishment as 'life without parole'. The Constitution's protections do not depend upon a legislature's semantic classifications." *Id.*. Thus, *Budder* concluded, "the sentencing practice that was the Court's focus in *Graham* was any sentence that denies a juvenile non-homicide offender a realistic opportunity to obtain release in his or her lifetime, whether or not that sentence bears the specific label 'life without parole'". *Id.* at 1057. The Tenth Circuit granted habeas relief and directed the state courts to resentence Budder. *Id.* at 1060. Although *Budder* is distinguishable from this case in that Budder did not commit homicide and thus the case was governed by *Graham*, that distinction does not make a relevant difference since even juveniles who commit homicide are entitled pursuant to *Miller* to a sentence other than mandatory life without the possibility of release. Clearly the Tenth Circuit did not agree that habeas relief is foreclosed once the sentence is imposed with the formal possibility of parole. This clearly conflicts with the primary district court finding in this case.. App'x B, 10a-13a.

Similarly, in *McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016) the Seventh Circuit remanded for further state habeas proceedings a claim that a 100-year sentence for a juvenile murderer was an Eighth Amendment violation in derogation of *Miller*. If the Seventh Circuit had agreed with the district court in this case that federal habeas relief under the Eighth Amendment only applies to juveniles actually sentenced to life without parole, *McKinley* would not have been reversed. The Seventh Circuit found that this Court's "concern that courts should consider in sentencing

that 'children are different' extends to discretionary life sentences and *de facto* life sentences, as in this case." *McKinley* at 914.

In *Moore v. Biter*, 725 F.3d 1184, 1192 (9th Cir. 2013) the Ninth Circuit found that "we cannot ignore the reality that a seventeen year-old sentenced to life without parole and a seventeen year-old sentenced to 254 years with no possibility of parole, have effectively received the same sentence." The Ninth Circuit reversed the district court's denial of a habeas petition because the practical effect, though not the formal title, of the sentence violated this Court's *Graham* decision.

In *In re Blocker*, 18-5114, 2018 U.S. App. LEXIS 21996 (6th Cir. Aug 7, 2018), the Sixth Circuit granted the defendant leave to file a second or successive § 2254 petition based on *Miller*, as "[e]ven if Blocker would be eligible for parole after fifty-one years, such a sentence is arguably the functional equivalent of life without parole, rendering Blocker's sentence mandatory."

In *Starks v. Easterling*, 659 Fed. Appx. 277 (6th Cir. 2016), the Sixth Circuit denied a claim that a juvenile felony murder defendant sentenced to life with parole who would become parole eligible at age 77 had a valid *Miller* claim, but a concurring judge (White) collected "state court decisions setting aside as cruel and unusual lengthy sentences that approach or exceed a defendant's life expectancy, regardless whether that sentence bears the title 'life without parole' *See, e.g., People v. Caballero,* 55 Cal. 4th 262, 268, 145 Cal. Rptr. 3d 286, 282 P.3d 291 (Cal. 2012); *People v. Rainer,* 2013 COA 51, 2013 WL 1490107, at *15 (Colo. Ct. App. 2013); *Casiano v. Comm'r of Corr.,*

317 Conn. 52, 115 A.3d 1031, 1047-48 (Conn. 2015); *Henry v. State,* 175 So.3d 675, 676, 680 (Fla. 2015); *State v. Null,* 836 N.W.2d 41, 72 (Iowa 2013); *Parker v. State,* 119 So.3d 987, 997 (Miss. 2013); *State v. Ronquillo,* 190 Wn. App. 765, 361 P.3d 779, 784-85 *(Wash. Ct. App. 2015); Bear Cloud v. State,* 2014 WY 113, 334 P.3d 132, 136 (Wyo. 2014)."

To be sure, other federal courts have disagreed that state sentences which are functionally equivalent to life without parole are controlled by *Miller*. *See, e.g., Ali v. Roy*, 950 F.3d 572 (8th Cir. 2020); *Bowling v. Dir., Va. Dep't of Corr.*, 920 F.3d 192, 197 (4th Cir. 2019) ("the Supreme Court has placed no explicit constraints on a sentencing court's ability to sentence a juvenile offender to life with parole. The Court has not yet gone so far as to require that juvenile offenders be released from prison during their lifetime.").

Notably, *Bowling* was a case where the defendant argued that despite being parole eligible, his Eighth Amendment rights were violated by the parole board's repeated denial of parole. The Fourth Circuit did not say this claim was not cognizable, it said that "to the extent that *Graham* and *Miller* require parole proceedings to provide juveniles a meaningful opportunity for release after sentencing, we are not persuaded that Appellant's parole proceedings fell below that standard", noting that the parole board considered, in part "whether [Appellant's] character, conduct, vocational training and other developmental activities during incarceration reflect the probability that [he] will lead a law-abiding life in the community and live up to all the conditions of parole", his "personal history", his "institutional adjustment", his "change in attitude towards [himself] and others", his

"release plans", his "evaluations", the "impressions gained . . . by the parole examiner" and "any other information provided by [Appellant's] attorney, family, victims or other persons". "The existing factors, therefore, allowed the Parole Board to fully consider the inmate's age at the time of the offense, as well as any evidence submitted to demonstrate his maturation since then, and account for the concern at the heart of *Graham* and *Miller*: 'that children who commit even heinous crimes are capable of change.'". *Bowling* at 198, *quoting Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). This fact pattern is clearly distinguishable from the black-and-white parole decision in this case, which denies parole until 2055 based solely on static crime factors as opposed to the rehabilitative factors the Virginia parole board explicitly considered in *Bowling*. *See also Brown v. Precythe*, 46 F.4th 879 (8th Cir. 2022) (parole system which gives juvenile homicide offenders parole consideration after 25 years and considers maturity and rehabilitation not unconstitutional); *Bey v. Hainsworth*, 22-cv-242, 2023 U.S. Dist LEXIS 240665 (E.D. Pa. Sept. 22, 2023) (magistrate judge concluding in Report and Recommendation that "the Supreme Court's *Miller* line of cases did not create an enforceable Eighth Amendment right in the context of parole proceedings", but "[i]n light of the differing conclusions among the courts to have addressed the issue thus far", finding Certificate of Appealability should issue) (Report and Recommendation affirmed and Certificate of Appealability denied in *Bey v. Hainsworth*, 22-cv-242, 2024 U.S. Dist. LEXIS 134907, 2024 WL 3550490 (E.D. Pa. Mar. 1, 2024)).

Petitioner does not contend that he has a constitutional right to be released before he dies in prison—he contends he has a constitutional right to be considered for release and that consideration must include evaluation of his juvenile status at the time of the crime and his post-crime behavior and demonstrated rehabilitation. The Eleventh Circuit, despite their denial of a Certificate of Appealability in this case, has found such a claim raised under 42 U.S.C. § 1983 to be fairly plausible and that an incarcerated inmate was entitled to proceed on it. *Moore v. Ga. Bd. Of Pardons & Paroles*, 23-12468, 2024 U.S. App. LEXIS 9943, 2024 WL 1765706 (11th Cir. Apr. 24, 2024).

The clearly disparate opinions of various Circuit Courts on whether and how to extend *Miller* and *Graham* to other factual scenarios where juvenile offenders are set to be incarcerated beyond their natural life expectancy demonstrates why the Eleventh Circuit was wrong to deny a Certificate of Appealability in this case. Reasonable jurists can disagree, and have disagreed, on these questions.

The Eleventh Circuit Erred in Denying a Certificate of Appealability on the Fourteenth Amendment Due Process Claim.

In addition to the Eighth Amendment claim, Mr. Peterson raises a fairly debatable Fourteenth Amendment due process claim. Florida's parole system as applied in this case is plainly arbitrary. To take the most obvious point, it punishes Mr. Peterson more severely for committing a separate armed robbery where nobody was hurt than for committing a first-degree murder where a victim was killed. There are a total of 327 months (27.25 years) assessed for the

first-degree murder case, F93-10518, and a total of 520 months (43.3 years) assessed for the armed robbery case, F93-12155. No rational or non-arbitrary system of criminal punishment treats armed robbery more harshly than first-degree murder

Furthermore, the Florida parole system as applied is arbitrary because there is no restriction or guidance provided as to how these points/months for the various offenses committed as part of the underlying crime are to be applied by the parole commission. Demonstrating this is that the parole examiner scored the exact same additional offenses far less severely than did the parole commission. The parole examiner, looking at the same defendant, the same crime, and the same parole scoring matrix, arrived at a release date in 2027, which was thereafter rejected by the parole commission in favor of the 2060 date. The difference arose from adding far more points/months for the same crimes, showing that Florida does not have a system of presumptive parole release date determination that is fairly transparent or non-arbitrary. There is no explanation as to how the parole commission arrived at the numbers (and both state and federal courts denied petitioner's request for an evidentiary hearing on this issue), other than that the main offense of first-degree murder has a defined score of 135 months for a youthful offender. Furthermore, Florida Administrative Code 23-21.010, which governs setting a parole date outside the "matrix time range" as Damon's was, contains no limitations or instructions on how much time should be added to the presumptive parole release date based on additional offenses beyond the main crime of conviction. Nor has the parole commission even attempted to explain how

they arrived at the points/months for Damon's various underlying charges, despite Florida Administrative Code 23-21.010(4) stating that the inmate must "receive[] in writing an explanation of such decision [to deviate from the parole investigator's recommendation] with individual particularity"

It is thus plain from the record documents that the parole board's decision in this case was arbitrary, capricious, and not cabined by any restrictions on the discretion of the parole board. Therefore, a fairly debatable federal habeas corpus claim was raised on due process grounds. *See Collins v. Hendrickson*, 371 F.Supp.2d 1326, 1347-48 (M.D. Fla. 2004) (recommending granting § 2254 petition, which district judge later did, because parole commission had acted in an arbitrary and capricious manner and thus violated petitioner's constitutional due process rights in its decision to revoke parole); *Ellard v. Alabama Bd. of Pardons & Paroles*, 824 F.2d 937, 942-46 (11th Cir. 1987) (state law can create a constitutional due process right to fair treatment by parole board).

Summary

This case presents this Court with an opportunity to clarify the lower court debate that has arisen since 2010 when it decided *Graham* and 2012 when it decided *Miller*, as to whether and how those cases and the Eighth and Fourteenth Amendments apply to juvenile sentences imposed without consideration of the *Miller*/*Graham* factors that distinguish juveniles from adult offenders that, however they are formally recorded, in practical effect mean the offender cannot be released within his natural lifetime. Due to *Miller* and *Graham* the imposition of mandatory life

sentences for juveniles in America has halted, and many juveniles who were already sentenced to life under such mandatory sentencing schemes have been resentenced. But not all of them. Not Damon Peterson. If his crime were committed just a year later, after Florida abolished parole, he would have been resentenced and would be currently serving a term-of-years sentence imposed with individualized consideration of his juvenile status. But because Florida kept in place a pre-1994 parole system which, as applied in this case, does not provide for any individualized consideration of either juvenile status or post-crime rehabilitation, and instead assigned months in prison based solely on the crime itself which result in a release date past his natural life expectancy, Mr. Peterson has made a colorable, fairly debatable claim for habeas corpus relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED DECEMBER 19, 2024

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-12159

DAMON PETERSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-20738-DPG

ORDER

Damon Peterson moves for a certificate of appealability to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition. His motion is DENIED because he has failed to make a substantial showing of the denial of a constitutional

right. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

/s/_____
UNITED STATES CIRCUIT JUDGE

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED MAY 29, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:22-cv-20738-GAYLES

DAMON PETERSON,

Petitioner,

v.

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER DENYING 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE comes before the Court on Petitioner Damon Peterson's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (the "Petition") [ECF No. 1]. Petitioner, a state prisoner, contends that his juvenile life sentence with parole violates the Eighth and Fourteenth Amendments because the Florida Parole Commission has denied him a meaningful opportunity for release within his lifetime. The Court has reviewed the record, including the Petition; the State's Response to the Court's Order to Show Cause, [ECF No. 17]; the state court record, [ECF Nos. 1-1, 1-2]; and Petitioner's Reply, [ECF No. 18]. For the following reasons, the Petition is **DENIED**.

Appendix B

I. BACKGROUND

On September 13, 1996, Petitioner pled guilty to first-degree felony murder, attempted armed robbery, and unlawful possession of a firearm while engaged in a criminal offense. *See* R. on Appeal [ECF No. 1-1 at 5, 20]. Petitioner simultaneously pled guilty to several felony charges in a separate case, including armed burglary with assault or battery and armed robbery. *Id.* at 7, 20. In exchange for his plea, the State agreed to waive the death penalty, which was then lawful for juveniles.[1] As to the first-degree felony murder count, the state trial court sentenced Petitioner to life imprisonment with the possibility of parole after 25 years. *See* [ECF No. 1-1 at 12]. In his other case, Petitioner was sentenced to concurrent terms of 15 years' imprisonment on the attempted armed robbery and firearm counts, along with concurrent 40-year sentences for the armed burglary and armed robbery counts. *Id.*

The facts of the felony murder case, as set forth in Petitioner's factual proffer, are as follows.[2] *See* Suppl. R. on Appeal [ECF No. 1-2 at 22–23]. On March 11, 1993, when he was sixteen years old, Petitioner and two co-defendants (who were also sixteen at the time) attempted to rob a German tourist couple. *Id.* at 22. Petitioner approached

1. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court declared the death penalty unconstitutional for juveniles.

2. Petitioner's factual proffer is not in the record but is quoted in his Mitigation Statement, which was filed in support of his appeal in state court.

the wife and pointed a handgun at her, demanding her purse. *Id.* at 22–23. Her husband tried to intervene, and Petitioner fatally shot him. *Id.* at 22.

In 2016, the Florida Supreme Court held in *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), that life sentences with parole for juveniles violated the Eighth Amendment. The Florida Supreme Court reasoned that "Florida's existing parole system, as set forth by statute, does not provide for individualized considerations of [the defendant's] juvenile status at the time of the murder[.]" *Id.* at 1041. Pursuant to *Atwell*, Petitioner filed a motion to correct illegal sentence under Fla. R. Crim. P. 3.800(a). [ECF No. 1-1 at 32–52]. In response, the State conceded that Petitioner was entitled to be resentenced under *Atwell*. *Id.* at 266–67. The State urged the court to postpone resentencing, however, until after Petitioner's first parole interview, which was set for October of 2017. *Id.* at 269–72. Counsel for Petitioner objected, arguing that the parole interview was irrelevant because his life sentence with parole was illegal under *Atwell*. *Id.* at 273–74. The court nonetheless agreed to postpone resentencing until after Petitioner's parole interview. *Id.* at 273.

On December 20, 2017, the Florida Parole Commission set Petitioner's Presumptive Parole Release Date ("PPRD") for July 13, 2060, when Petitioner will be 83 years old. [ECF No. 1-2 at 279–81]. The Commission overruled its investigator who interviewed Petitioner and recommended that his PPRD be set for April 13, 2027. *Id.* at 280. The Commission's determination was based on a matrix of point values assigned to different

"salient factors," with each point value corresponding to a graduated range of months of incarceration based on the seriousness of the offense. *Id.* at 281. Using this matrix, the Commission calculated Petitioner's term of incarceration for felony murder at 135 months. *Id.* at 280–81. The Commission then added consecutive terms of months—ranging from 60 to 180 months—for various aggravating factors based on Petitioner's other offenses in his two cases, along with a consecutive term of 60 months for "[u]nsatisfactory institutional conduct as evidenced by his processed disciplinary record." *Id.* at 280. This yielded a total of 807 months, or 67.25 years, of incarceration. *Id.* at 279. The Commission also determined that Petitioner's next interview would occur within seven years, rather than two years, based on: (1) unsatisfactory institutional conduct, (2) use of a firearm, (3) unreasonable risk to others, and (4) multiple separate offenses. *Id.* The Commission stated that it "considered mitigation" but provided no further explanation. *Id.*

On July 12, 2018, following the Parole Commission's decision, the state trial court held a hearing at which the State advised the court that the parties were close to a plea deal, and that the State would be offering "a plea to a term of years." [ECF No. 1-1 at 289]. However, the parties were unable to reach an agreement, and a resentencing hearing was set for November 19, 2018. *Id.* at 195.

On November 8, 2018, eleven days before Petitioner's resentencing hearing, the Florida Supreme Court decided *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018), which overruled *Atwell* and held that a juvenile offender's life

sentence with parole (or its functional equivalent) does not violate the Eighth Amendment because Florida's statutory parole process provides juveniles with "a 'meaningful opportunity' to be considered for release during their natural life based upon 'normal parole factors'[.]" *Id*. at 1241 (quoting *Virginia v. LeBlanc*, 582 U.S. 91, 94 (2017)). At Petitioner's resentencing hearing, the trial court concluded that it was bound by *Franklin*, and it denied Petitioner's motion to correct illegal sentence. [ECF No. 1-1 at 210–11]. Petitioner's counsel argued that failing to resentence Petitioner would violate his right to equal protection under the Fourteenth Amendment because other, similarly situated juvenile homicide offenders had been resentenced under *Atwell* before it was overruled. *Id*. at 208–09. The trial court rejected that argument, however, concluding that it was obligated to adhere to changes in the law affecting pending cases. *Id*. at 209–10. Petitioner also requested an evidentiary hearing to demonstrate that Florida's parole process violates United States Supreme Court precedent by failing to consider juvenile status and rehabilitation, which the court denied. *Id*. at 176–80.

Petitioner appealed, and the Third District Court of Appeal ("Third DCA") affirmed, *per curiam*. *Peterson v. State*, 317 So. 3d 214 (Fla. 3d DCA 2021).

On March 11, 2022, Petitioner, through counsel, timely filed the instant Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, challenging the Parole Commission's decision. [ECF No. 1]. Petitioner raises three claims. First, he argues that the Commission's decision to set his PPRD

for a date that falls beyond his life expectancy violates the Eighth Amendment, as articulated by the Supreme Court in *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 567 U.S. 460 (2012). Second, he claims that the Commission's decision violates his Fourteenth Amendment right to due process because it applied certain criteria in a manner that was arbitrary and capricious. And third, Petitioner contends that his sentence violates the Fourteenth Amendment's Equal Protection Clause because he is serving a harsher sentence than other, similarly situated juvenile homicide offenders, without any rational basis for the disparity.

The State filed a Response, arguing that all three claims are without merit. [ECF No. 17]. Petitioner filed a Reply. [ECF No. 18]. The matter is ripe for review.

II. LEGAL STANDARD

To obtain federal habeas relief, a state prisoner must show that he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The prisoner must have exhausted his state court remedies prior to filing the federal habeas petition. § 2254(b). The Court may grant habeas relief only if the state court's decision on the merits of the federal claim was: (1) "contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States;" or (2) "was based on an unreasonable determination of the facts in light of the evidence presented" in the state court proceeding. § 2254(d)(1)–(2). This standard is "highly deferential"

and "demands that state-court decisions be given the benefit of the doubt." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (quoting *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam)).

"[C]learly established Federal law" means "the holdings, as opposed to the dicta, of [the Supreme] Court's decisions as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000). "A decision is 'contrary to' clearly established federal law if the state court applied a rule that contradicts governing Supreme Court precedent, or if it reached a different conclusion than the Supreme Court did in a case involving materially indistinguishable facts." *James v. Warden*, 957 F. 3d 1184, 1190 (11th Cir. 2020) (citing *Williams*, 529 U.S. at 412–13). A state court decision involves an "unreasonable application of clearly established federal law" if prior Supreme Court decisions "clearly require[d] the state court" to reach a different result. *Kernan v. Cuero*, 583 U.S. 1, 3 (2017).

"[W]hen the last state court to decide a prisoner's federal claim explains its decision on the merits in a reasoned opinion . . . a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Wilson v. Sellers*, 584 U.S. 122, 125 (2018). However, federal courts are not limited by the particular justifications the state court provided, and they may consider additional rationales that support the state court's determination. *Pye v. Warden, Ga. Diag. Prison*, 50 F.4th 1025, 1036 (11th Cir. 2022) (en banc). A state court's decision is reasonable "so long

as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). In addition, "a determination of a factual issue made by a State court shall be presumed to be correct," and the petitioner bears "the burden of rebutting the presumption of correctness by clear and convincing evidence." § 2254(e)(1).

III. DISCUSSION

A. Ground One: Eighth Amendment Challenge under *Graham* and *Miller*

In Ground One, Petitioner claims that his life sentence with parole violates the Eighth Amendment's proscription on Cruel and Unusual Punishments, as established by the Supreme Court in *Graham* and *Miller*. In *Graham*, the Supreme Court held that the Eighth Amendment prohibits a sentence of life without parole for a juvenile who commits a nonhomicide crime. 560 U.S. at 82. The Supreme Court instructed that states must give juvenile nonhomicide offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75.

In *Miller*, the Supreme Court held that a sentencing scheme that mandates life without parole for juveniles who commit homicide violates the Eighth Amendment. 567 U.S. at 470, 479. *Miller* does not "categorically bar" life-without-parole sentences for juvenile homicide offenders, but it requires the sentencer to consider "mitigating

circumstances"—in particular, the offender's "youth and attendant characteristics"—before imposing such a sentence. *Id.* at 480, 483. The Supreme Court's holdings in both *Miller* and *Graham* rest on the principle that "children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . , 'they are less deserving of the most severe punishments.'" *Id.* at 471 (quoting *Graham*, 560 U.S. at 68).

Petitioner concedes that *Miller* and *Graham* do not "squarely apply" to this case because he was sentenced to life *with* parole for a homicide offense. [ECF No. 1 at 4]. Nonetheless, he insists that their "reasoning is instructive." [ECF No. 1 at 4]. Petitioner asserts that he lacks a "meaningful opportunity" for release within his natural life span because his PPRD falls beyond his life expectancy, according to actuarial data,[3] and because it is based primarily on "static factors" related to his offenses that he cannot change through rehabilitation. [ECF No. 1 at 20–28]. Petitioner thus contends that his sentence contravenes the broad Eighth Amendment principles articulated in *Graham* and *Miller*. *Id.*

Petitioner's sentence does not violate *Graham* or *Miller* for several reasons. First, as Petitioner acknowledges, the holdings of these cases do not extend to life-with-parole sentences for homicide. Petitioner essentially asks this Court to extend the reasoning of *Graham* and *Miller* to

3. Petitioner cites data from the Centers for Disease Control stating that the average life expectancy for Black men born in the mid-1970s is 62.4 years. [ECF No. 1 at 10 n.5].

the facts of this case. But this Court is prohibited from doing so on federal habeas review because "only the actual holdings of [the Supreme Court's] decisions can 'clearly establish' federal law for § 2254(d)(1) purposes." *Loggins v. Thomas*, 654 F.3d 1204, 1222 (11th Cir. 2011) (quoting *Carey v. Musladin*, 549 U.S. 70, 74 (2006)). Thus, Petitioner's "attempt[] to extend" the rationale of *Graham* and *Miller* necessarily "fails because only the holdings of [the Supreme Court's] decisions matter. A rationale is not a holding any more than a road is a destination." *Id*. at 1224 (rejecting a habeas petitioner's attempt to extend *Graham* to his claim, prior to *Miller*, that his juvenile life sentence without parole violated the Eighth Amendment); *see also White v. Woodall*, 572 U.S. 415, 426 (2014) ("Section 2254(d)(1) provides a remedy for instances in which a state court unreasonably *applies* this Court's precedent; it does not require state courts to *extend* that precedent or license federal courts to treat the failure to do so as error." (emphasis in original)).

Graham's holding is expressly limited to nonhomicide offenses. *See Miller*, 567 U.S. at 473 ("*Graham*'s flat ban on life without parole applied only to nonhomicide crimes, and the Court took care to distinguish those offenses from murder"). *Miller*'s holding is expressly limited to *mandatory* life sentences *without* parole. *See id*. at 479; *United States v. Grant*, 9 F.4th 186, 195 (3d Cir. 2021) ("*Miller*'s holding was limited to 'mandatory life-without-parole sentences.'" (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016))). The state court's decision to deny Petitioner's motion to correct illegal sentence was neither contrary to, nor an unreasonable

application of, these holdings. § 2254(d)(1). Other post-*Miller* and post-*Graham* decisions upholding, on federal habeas review, similar or harsher sentences for juveniles convicted of similar homicide offenses, confirm that the state court reasonably applied federal law. *See*, *e.g.*, *Starks v. Easterling*, 59 F. App'x 277, 278, 281 (6th Cir. 2016) (juvenile life sentence for felony murder with the possibility of parole at 77—an age that "exceeds the life expectancy of African American males"—did not violate the Eighth Amendment "[b]ecause the Supreme Court has not yet explicitly held that the Eighth Amendment extends to juvenile sentences that are the functional equivalent of life [without parole]"); *Sweet v. Sec'y, Dep't of Corr.*, No. 20-CV-1832, 2023 WL 5830434, at *16 (M.D. Fla. Sept. 8, 2023) (life sentence with the possibility of parole after twenty-five years for seventeen-year old found guilty of first-degree felony murder in a botched armed robbery case did not violate the Eighth Amendment); *Wallace v. Crowe*, No. 17-CV-0107, 2018 WL 4472888, at *4 (N.D. Ala. Aug. 22, 2018) (sixteen-year old convicted of felony murder, who argued that "his four consecutive life sentences are a 'de facto' sentence of life without parole," was not entitled to habeas relief because "[r]etaining the possibility of parole adequately remedies any perceived *Miller* violation").

Second, even if this Court could extend the reasoning of *Graham* and *Miller*, Petitioner's sentence would still be constitutional. Petitioner's main contention is that he lacks a "meaningful opportunity" to obtain release within his actuarial life expectancy, but the record demonstrates otherwise. Petitioner will receive a new parole interview

at least once every seven years, and there is no evidence in the record to suggest that the Parole Commission cannot or will not reconsider its decision. Petitioner highlights the seemingly arbitrary number of months that the Commission assigned to various aggravating factors, contending that the Commission was "uncabined by any limits on its discretion[.]" [ECF No. 1 at 3]. If that is true, however, then the Commission has the discretion to change Petitioner's PPRD in the future. Moreover, the record does not show that the Commission considered only "static factors" related to the nature of Petitioner's crimes. The Commission also noted Petitioner's "unsatisfactory institutional conduct" and added 60 months to his sentence based on this factor. [ECF No. 1-2 at 280]. Although Petitioner disagrees with how the Commission weighed this factor, it cannot be said that it failed to consider rehabilitation.

Crucially, the Florida Supreme Court held in *Franklin* that Florida's parole system "fulfills *Graham*'s requirement that juveniles be given a 'meaningful opportunity' to be considered for release during their natural life based upon 'normal parole factors,' as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review." *Franklin*, 258 So. 3d at 1241. Petitioner does not contend that *Franklin* unreasonably applied federal law. Rather, he argues that his case is distinguishable from *Franklin* because there, the majority opinion did not address how the defendant's PPRD was calculated. Petitioner posits that "it may be that Franklin . . . had a meaningful

opportunity to be released during his natural life based on his post-incarceration behavior . . . [w]e do not know." [ECF No. 1 at 28]. As the State points out, however, the record in *Franklin* did contain evidence of how the defendant's PPRD was calculated, as noted by the dissent. *See Franklin*, 258 So. 3d at 1242–43 (Pariente, J. dissenting). The dissent, like Petitioner, argued that "the Commission relies on static, unchanging factors, such as the crimes committed and previous offenses, when determining whether or not to grant an offender parole." *Id*. at 1243. The majority disagreed, finding that Florida's parole process sufficiently provides an opportunity for release. Statutorily, Petitioner is subject to the same parole process as the defendant in *Franklin*. *See* Fla. Stat. §§ 947.16–.174. Thus, Petitioner has not shown that his sentence deprives him of a meaningful opportunity to obtain release during his life span.

Third, even if the Parole Commission had deprived Petitioner of a "meaningful opportunity" for release, that would still be permissible under *Miller*. As previously explained, *Miller* permits a sentencer to impose life without parole on a juvenile homicide offender, "so long as the sentencer has discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment." *Jones v. Mississippi*, 593 U.S. 98, 106 (2021) (quoting *Miller*, 567 U.S. at 476). Petitioner contends that the Parole Commission failed to consider his youth, but the record again demonstrates otherwise. The Commission applied the "Youthful Offender" matrix time range of 90–135 months, rather than the adult range of 120–180 months, to Petitioner's offense of felony murder, calculating his PPRD

using the top of that range. [ECF No. 1-2 at 281–82]. Although Petitioner contends that his total presumptive sentence of 807 months is the functional equivalent of life without parole, *Miller* does not forbid such sentences. *See Ali v. Roy*, 950 F.3d 572, 575 (8th Cir. 2020) (the Supreme Court "has not 'clearly established' that the rule in *Miller*" applies to sentences that are "functionally equivalent to life-without-parole").

And finally, even if the Parole Commission did rely solely on "static factors," its decision would still not be unconstitutional under *Miller*. There, the Supreme Court addressed only the initial sentencing phase—at which a sentencer can consider *only* "static factors" that exist at that time—and it did not address what limits, if any, should apply to state parole board decisions. *See Brown v. Precythe*, 46 F.4th 879, 886 (8th Cir. 2022) (holding that *Miller* applies only to the initial sentencing determination and does not extend to parole proceedings); *Bowling v. Dir., Va. Dep't of Corr.*, 920 F.3d 192, 197 (4th Cir. 2019) (same). Thus, the fact that Petitioner challenges a parole board decision, rather than his initial sentence, puts his claim beyond the reach of *Miller*.

In sum, Petitioner's juvenile life sentence for felony murder, though undoubtedly harsh, does not foreclose the possibility of parole within his lifetime. Thus, it complies with the Eighth Amendment principles articulated in *Miller* and *Graham*. No Supreme Court precedent "clearly required" the state court to find that Petitioner's sentence violates the Eighth Amendment. *Kernan*, 583 U.S. at 3. Accordingly, Petitioner is not entitled to relief as to Ground One.

B. Ground Two: Fourteenth Amendment Due Process Challenge

Petitioner next argues that the Parole Commission's decision violates the Due Process Clause of the Fourteenth Amendment because it was arbitrary and capricious. [ECF No. 1 at 22–25]. Although Petitioner includes this argument under his first heading, it raises a separate ground for relief because neither *Graham* nor *Miller* dealt with procedural due process requirements for parole board decisions. Petitioner claims that the Parole Commission's calculation of his PPRD was arbitrary and capricious because (1) the Commission added an arbitrary number of months for each aggravating factor without explaining its decision and without any apparent limits on its discretion—for instance, it added a greater number of months for armed robbery than it did for felony murder; and (2) the Commission's calculation was based mostly on "static factors" concerning the nature of Petitioner's crimes that he cannot change through rehabilitative efforts. *Id.*

Petitioner identifies no "clearly established federal law" that supports this claim. To establish a violation of the Due Process Clause, a petitioner typically must have been deprived of a liberty interest created by the United States Constitution or by a state. *See Am. Mfrs. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999); *Monroe v. Thigpen*, 932 F.2d 1437, 1441 (11th Cir. 1991). In *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1 (1979), the Supreme Court held that there is no constitutional or inherent right to parole. *Id.* at 7; *see also Monroe*, 932 F.2d

at 1441. "The Court also determined, however, that states may confer such a liberty interest in parole under state law." *Id.* "When a state statute, practice, or regulation provides for an expectancy of parole and limits official discretion to deny parole, then a liberty interest in parole is created." *Id.*

In *Walker v. Fla. Parole Comm'n*, 299 F. App'x 900 (11th Cir. 2008), the Eleventh Circuit held that "Florida statutes do not create a liberty interest in parole, because the decision whether to release an inmate on parole is a matter committed to the discretion of the Commission without the mandate of statute." *Id.* at 902 (citing *Staton v. Wainwright*, 665 F.2d 686, 688 (5th Cir. Unit B 1982)). "Where there is no liberty interest in parole, 'the procedures followed in making the parole determinations are not required to comport with the standards of fundamental fairness.'" *Id.* (quoting *O'Kelley v. Snow*, 53 F.3d 319, 321 (11th Cir. 1995)).

"Nonetheless, even without a protected liberty interest, a due process claim may be available if the Commission engaged in 'flagrant or unauthorized action' or treated a prisoner 'arbitrarily and capriciously' in making a parole determination, such as by knowingly or admittedly relying on false information." *Harrell v. Fla. Parole Comm'n*, 479 F. App'x 234, 236 (11th Cir. 2012). However, a state parole board does not act arbitrarily and capriciously when it fails to explain its decision or specify the evidence on which it relied in making its determination. *Id.* ("the Commission need not specify the particular evidence on which it relied in making a

parole determination"); *Walker*, 299 F. App'x at 902 ("the Commission did not act in an arbitrary and capricious fashion by not explaining why certain aggravators were used to calculate his PPRD outside the matrix").

Here, Petitioner does not allege that the Parole Commission knowingly relied on false information. Rather, the crux of his claim is that the Commission relied on improper, "static factors," and that its decision was both unexplained and unconstrained by any limits on its discretion. Eleventh Circuit case law makes clear that such practices by a parole board do not violate due process when there is no liberty interest in parole. *See*, *e.g.*, *Swain v. Fla. Comm'n on Offender Rev.*, 780 F. App'x 676, 678 (11th Cir. 2019) (finding no due process violation where the Commission failed to abide by its own regulation); *Thorne v. Chairperson Fla. Parole Comm'n*, 427 F. App'x 765, 768, 772 (11th Cir. 2011) (rejecting the claim that a "five-year delay between parole hearings violated due process because it was selectively applied and was based on vague and arbitrary rules"); *Nyberg v. Crawford*, 290 F. App'x 209, 211 (11th Cir. 2008) (no due process violation was shown even though the record did not support one of the Commission's stated reasons for setting the petitioner's PPRD).

Even if, as some district courts have held, *Miller* and *Graham* created a cognizable liberty interest in parole for juveniles,[4] *see Howard v. Coonrod*, 546 F. Supp. 3d 1121,

4. Importantly for federal habeas purposes, the Supreme Court has not expressly recognized this liberty interest.

1132 (M.D. Fla. 2021); *Flores v. Stanford*, No. 18-CV-2468, 2019 WL 4572703, at *10 (S.D.N.Y. Sept. 20, 2019), Petitioner still fails to identify any "clearly established federal law" indicating that the Commission's actions violated due process, § 2254(d)(1).[5] As explained, on federal habeas review, this Court may not find a new constitutional violation where one has not previously been established. *See Woodall*, 572 U.S. at 427 ("The appropriate time to consider the question as a matter of first impression would be on direct review, not in a habeas case governed by § 2254(d)(1)"); *LeBlanc*, 582 U.S. at 95 (observing that Virginia's geriatric release program "perhaps" violated the Eighth Amendment, "but perhaps not," and holding that "[t]hese arguments cannot be resolved on federal habeas review"). Importantly, Petitioner does not allege that the Commission acted contrary to Florida's parole statute, which the Florida Supreme Court has confirmed employs "normal parole factors." *Franklin*, 258 So. 3d at 1241 (quoting *LeBlanc*, 582 U.S. at 94). Accordingly,

5. Petitioner cites *Collins v. Hendrickson*, 371 F. Supp. 2d 1326 (M.D. Fla. 2005), but in that case, the petitioner had been released from prison before his parole was revoked and he was subsequently reincarcerated. *Id.* at 1327. The petitioner in *Collins* therefore "enjoy[ed] a liberty interest" that is not implicated here. *Id.* Moreover, the district court in *Collins* found a due process violation because the Commission had violated Florida's parole statute by rejecting the factual findings of the parole examiner, which were "supported by competent, substantial evidence." *Id.* at 1329. No similar allegation has been made here. Likewise, the other case Petitioner cites, *Ellard v. Alabama Bd. of Pardons & Paroles*, 824 F.2d 937 (11th Cir. 1987), also involved the grant of parole, an "event [that] created a liberty interest sufficient to trigger the procedural components of the due process clause." *Id.* at 944.

Petitioner has not shown that the Parole Commission's decision violates due process.

C. Ground Three: Fourteenth Amendment Equal Protection Challenge

Lastly, Petitioner challenges his sentence on equal protection grounds. He asserts that the State of Florida is treating him worse than two similarly situated groups of juvenile homicide offenders: (1) those who were sentenced to life after 1994, when parole was abolished, and subsequently had their sentences vacated by *Miller*, and (2) pre-1994 offenders, like Petitioner, who were sentenced to life with parole but, unlike Petitioner, were resentenced in the two years between the *Atwell* decision and its abrogation by *Franklin*. [ECF No. 1 at 28–31]. Petitioner concedes that he is not a "suspect class" but argues that his sentence violates the Equal Protection Clause because there is no rational basis for his disparate treatment. *Id*. at 30–31.

"Under the rational basis test, a law does not violate equal protection so long as it is rationally related to a legitimate government interest." *United States v. Campos-Diaz*, 472 F.3d 1278, 1280 (11th Cir. 2006) (quotation omitted). The Eleventh Circuit has held that sentencing disparities between similarly situated criminal defendants do not violate equal protection. *Id*. at 1279–80 (holding that the unavailability of a "fast track program" in the judicial district in which the defendant was sentenced, which would have allowed the district judge to apply a downward departure to his sentence, did not violate equal protection).

Petitioner identifies no "clearly established federal law," and this Court is aware of none, that suggests that it violates equal protection to impose different sentences on similarly situated defendants who were sentenced at different times under different sentencing regimes. As the State points out, Petitioner's disparate treatment is rationally related to the legitimate government interest in adhering to changes in sentencing law, enacted in this case by both the Florida legislature and the Florida Supreme Court. *See Jones v. Governor of Fla.*, 975 F.3d 1016, 1035 (11th Cir. 2020) (recognizing that "[a]lthough 'every reform that benefits some more than others may be criticized for what it fails to accomplish,' that reality does not invalidate the measure under the Equal Protection Clause." (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 39 (1973))). Accordingly, Petitioner's sentence does not violate equal protection.

IV. EVIDENTIARY HEARING

In a habeas corpus proceeding "[t]he burden is on the petitioner . . . to establish the need for an evidentiary hearing." *Birt v. Montgomery*, 725 F.2d 587, 591 (11th Cir. 1984) (en banc). "In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). Therefore, if a habeas petition does not allege enough specific facts that, if true, would warrant relief, the petitioner is not entitled to an evidentiary hearing. *See Allen v. Sec'y, Fla.*

Dep't of Corr., 611 F.3d 740, 763 (11th Cir. 2010) ("Having alleged no specific facts that, if true, would entitle him to federal habeas relief, [the petitioner] is not entitled to an evidentiary hearing.").

Here, Petitioner has not provided enough facts that, if true, would entitle him to habeas relief. Because the Court can "adequately assess [Petitioner's] claim[s] without further factual development," *Turner v. Crosby*, 339 F.3d 1247, 1275 (11th Cir. 2003), an evidentiary hearing is not warranted here.

V. CERTIFICATE OF APPEALABILITY

Petitioner is advised that he has no absolute right to appeal this Court's final order denying his § 2254 habeas corpus petition; but to do so, he must obtain a certificate of appealability ("COA"). *See Harbison v. Bell*, 556 U.S. 180, 183 (2009) (citing *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000); *Wilkinson v. Dotson*, 544 U.S. 74, 78-83 (2005)). Thus, when a district court rejects a habeas petitioner's constitutional claims on the merits, he must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *See Slack*, 529 U.S. at 484. Upon consideration of this record, the Court finds that no certificate of appealability shall issue.

VI. CONCLUSION

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

Appendix B

1. The Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [ECF No. 1] is **DENIED**.

2. A Certificate of Appealability is **DENIED**.

3. This case is **CLOSED**, and all pending motions are **DENIED AS MOOT**.

4. A final judgment in Respondent's favor shall enter via separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of May 2024.

/s/ Darrin P. Gayles
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

APPENDIX C — OPINION OF THE THIRD DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA, FILED FEBRUARY 24, 2021

THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 3D19-1389
Lower Tribunal No. 93-10518B

DAMON PETERSON,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Opinion filed February 24, 2021.
Not final until disposition of timely filed
motion for rehearing.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Veronica A. Diaz, Judge.

Daniel J. Tibbitt, P.A., and Daniel Tibbitt, for appellant.

Ashley Moody, Attorney General, and Linda Katz, Assistant Attorney General, for appellee.

Appendix C

Before EMAS, C.J., and SCALES and LOBREE, JJ.

PER CURIAM.

Affirmed. *See Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018), *cert. denied sub nom. Franklin v. Florida*, 139 S. Ct. 2646 (2019); *State v. Michel*, 257 So. 3d 3 (Fla. 2018). *See also Wright v. State*, 308 So. 3d 119 (Fla. 3d DCA 2020); *Adams v. State*, 949 So. 2d 1125, 1126 (Fla. 3d DCA 2007); *Melton v. State*, 304 So. 3d 375 (Fla. 1st DCA 2020).

APPENDIX D — ORDER OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL DISTRICT IN AND FOR MIAMI DADE COUNTY FLORIDA, FILED JUNE 25, 2019

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL DISTRICT IN AND
FOR MIAMI DADE COUNTY FLORIDA
CRIMINAL DIVISION

CASE NUMBER: F93010518B

THE STATE OF FLORIDA

Plaintiff

VS.

DAMON PETERSON

Defendant

Filed June 25, 2019

ORDER DENYING DEFENSE'S MOTION TO CORRECT ILLEGAL SENTENCE BASED ON JUVENILE LIFE SENTENCE AND 40 YR-SENTENCE FILED 12/8/16

THIS CAUSE HAVING COME BEFORE the Court upon the Defense's Motion and the Court having examined the said Motion and the Motion being insufficient to support the relief prayed, IT IS THEREUPON,

CONSIDERED, ORDERED AND ADJUDGED that the above Motion filed by Defense's Counsel be, and the same is hereby DENIED WITHOUT HEARING

The movant is advised that he/she has the right to appeal within thirty (30) days of the rendition of this order.

DONE AND ORDERED IN Open Court at Miami-Dade County, Florida, this 13th day of June, 2019.

/s/_____
JUDGE VERONICA DIAZ F020

I CERTIFY that a copy hereof has been furnished to the Movant, DANIEL TIBBITT PA, by mail this JUN 25 2019.

BY: /s/_____
Deputy Clerk