No. _____

In the Supreme Court of the United States

STATE OF UTAH,
Petitioner,
v.
MORRIS T. MULLINS,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Utah

Petition for a Writ of Certiorari

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Question Presented

Whether a sentencing court can impose a sentence of life without parole on a juvenile murderer even if the court finds that the juvenile is not permanently incorrigible or at least suggests that the juvenile is capable of change and reform.

Parties to the Proceeding

All parties appear in the caption of the case on the cover page.

Related Proceedings

State v. Mullins, No. 20200149-SC, Utah Supreme Court, 2025 UT 57, —P.3d—. Judgment entered November 20, 2025. Rehearing petition denied December 5, 2025.

Mullins v. Cook, No. 2:17-cv-01248-TC, United States District Court for the District of Utah. On *Rhines* stay.

Mullins v. State, No. 17060085, Sixth Judicial District Court of Utah. Judgment entered February 13, 2020.

State v. Mullins, No. 20040161-SC, Utah Supreme Court, 2005 UT 43, 116 P.3d 374. Judgment entered July 8, 2005.

Mullins v. State, No. 040913656, Sixth Judicial District Court of Utah. Judgment entered September 14, 2004.

Mullins v. State, No. 020600297, Sixth Judicial District Court of Utah. Judgment entered October 2, 2002.

State v. Mullins, No. 011600140, Sixth Judicial District Court of Utah. Judgment entered May 2, 2002.

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Opinion Below

The opinion of the Utah Supreme Court is reported at 2025 UT 57, — P.3d —, and attached as Pet. App. 1a–65a (Appendix A).

Jurisdiction

The Utah Supreme Court entered judgment on November 20, 2025. The court denied the State's petition for rehearing on December 5, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

Constituitonal Provision Involved

The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Statement of the Case

A. Mullins pleads guilty to aggravated murder committed as a juvenile.[1]

In 2001, just weeks before his eighteenth birthday, Respondent Morris Mullins raped and killed 78-year-old Amy Davis in her home. R1–2, 5, 57. Davis's body was found the next day; she "had been sexually assaulted, struck on the side of the head with blunt force, and suffocated" with a pillow. R125.

Police soon identified Mullins as the suspect in part because he was a suspect in a case in Arizona that also involved the sexual assault and homicide of an elderly woman in her home. R6, 135, 739–40.[2]

The State of Utah charged Mullins as an adult with one count of aggravated murder and one count of rape. R1–2. In exchange for dismissing the rape charge, Mullins pleaded guilty to aggravated murder, admitting that "while committing the offense of burglary, [he] knowingly caused the death of Amy Davis." R56–64.

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[1] Mullins pleaded guilty before even a preliminary hearing was held. These facts are taken from the probable cause statement, witness statements, the sentencing transcript, and related record documents.

[2] Mullins later pleaded guilty to the Arizona murder. *See* Ben Winslow, *Richfield Woman's Killer Guilty in Arizona Murder*, Deseret News (June 12, 2007) https://www.deseret.com/2007/6/12/20024179/richfield-woman-s-killer-guilty-in-arizona-murder (last visited Mar. 2, 2026).

B. Mullins is sentenced to life without parole based on the court's consideration of relevant factors, including his age, under Utah's discretionary sentencing scheme.

Under Utah's discretionary sentencing scheme for the capital felony of aggravated murder, the court could impose a sentence of either 20 years to life or life without parole based on its consideration of aggravating and mitigating factors, including "the youth of the defendant at the time of the crime." Utah Code Ann. § 76-3-207 (West 2001).[3]

Consistent with Utah law, the trial court held a sentencing hearing in 2002 during which it considered the State's and Mullins's submissions and arguments on the aggravating and mitigating factors. Pet. App. 66a–116a (Appendix B). The State's case for life without parole included evidence about the planned and heinous crime, Utah and Arizona police reports, Mullins's time in jail involving property destruction and assaults on inmates and police officers, and his continued physical and verbal sexual deviancy. Pet. App. 88a–95a; *see* R125–254.

Mullins argued for a chance for parole. Pet. App. at 95a–113a. He relied heavily on a sentencing evaluation from a clinical and forensic psychologist that identified and analyzed in detail several mitigating factors, including Mullins's age and immaturity, intellectual disabilities and academic deficiencies, physical

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[3] The State agreed not to seek capital punishment, a penalty this Court would not prohibit for juvenile offenders until three years later. *See Roper v. Simmons*, 543 U.S. 551, 578 (2005).

and sexual abuse as a child, family dysfunction, and related familial factors. R259–311.

The court asked if defense counsel was "trying to assess the level of hope for the future you hold out for Mr. Mullins," and remarked that it didn't "see anything in [the psychologist]'s report on how to assess hope for change." Pet. App. 110a. Defense counsel responded that he was unaware of any "standardized scale to assess hope to change," and admitted "[w]e cannot predict" whether change was possible. *Id.* at 110a–111a. But if Mullins were to experience "true change" after many years in prison, the board of pardons should be able to make that determination. *Id.* at 111a–112a.

The court was "satisfied" with "the recommendations of counsel," "the reports," and "the statements made by the family members," and the court "appreciate[d] the work" of the psychologist. *Id.* at 113a–114a. The court recognized that Mullins's life was "chaotic" and he experienced a poor upbringing, but when all the considerations were balanced together, the court decided that the appropriate sentence was "life imprisonment without the possibility of parole." *Id.* at 114a.

The court then addressed Mullins directly, stating: "[I]f you're gonna be with us for a long time and have a chance to change, I hope—not under the present circumstances—I'm hoping that you'll find some way to be productive." *Id.* at 115a.

C. Mullins challenges his sentence as illegal under *Miller v. Alabama*.

More than a decade after sentencing, Mullins filed a motion to correct an illegal sentence under rule 22(e), Utah Rules of Criminal Procedure, asserting that his sentence was illegal under *Miller v. Alabama*, 567 U.S. 460 (2012). R451–55.

Mullins argued *Miller*'s holding—that mandatory life-without-parole sentences for juveniles violated the Eighth Amendment—made his sentence unconstitutional because there was "no record indicating that the court took into consideration [his] youth" and other factors. R454. And he asserted that *Miller* "mandates that there be a finding on the record . . . to support the judgment of life without parole." R786.

The district court denied the motion. Pet. App. 117a–120a (Appendix C). It ruled that the sentencing court did not err when it imposed Mullins's life-without-parole sentence because the court "considered mitigating factors" and *Miller* "does not require a sentencer to make findings on the record." *Id.* at 119a–120a.

After having his time to appeal reinstated, Mullins appealed the denial of his rule 22(e) motion. R708–09.

D. A divided Utah Supreme Court vacates Mullins's sentence.

The majority. In a 3-2 decision, the Utah Supreme Court vacated Mullins's juvenile life-without-parole (JLWOP) sentence based on the majority's interpretation of *Miller* and its progeny—*Montgomery v. Louisiana*, 577 U.S. 190 (2016) and *Jones v. Mississippi*, 593 U.S. 98 (2021)—and how that precedent

applied to the sentencing court's statement about Mullins's "chance to change." Pet. App. 2a–3a, 34a–52a.

In the majority's view, the *Miller* line of cases established a categorical bar to imposing JLWOP on a class of juvenile offenders: "if a child is capable of change and reform—that is, is not incorrigible—a JLWOP sentence *is* disproportionate and unconstitutional." *Id.* at 43a.

With that interpretation of the law, the majority "turn[ed] to the facts of Mullins's case." *Id.* at 44a. First, the majority concluded that because there was no "affirmative factual finding that Mullins was capable of change," the majority could not "declare Mullins's sentence unconstitutional as a matter of law[.]" *Id.* at 45a; *see also id.* at 51a ("[W]e can only speculate as to whether Mullins is one of the rare individuals 'whose crimes reflect irreparable corruption.'" (quoting *Montgomery*, 577 U.S. at 209)).

But the majority believed the sentencing court "may have implicitly" made such a finding based on the court's "comment suggesting some 'hope' that Mullins might have 'a chance to change.'" *Id.* at 46a. And a JLWOP sentence was "incompatible with a suggestion that Mullins could change." *Id.*; *see also id.* ("While we cannot say that Mullins is the type of juvenile offender for whom JLWOP is categorically disproportionate . . . the court's comments raise significant concerns that Mullins may fall into that category.").

The majority therefore remanded the case so the sentencing court could "determine the appropriate sentence here, considering Mullins's youth as required by the Eighth Amendment, consistent with *Miller* and this opinion." *Id.* at 51a.

The dissent. Two justices dissented from the majority's interpretation of *Miller* and its progeny. *Id.* at 52a–65a. The dissent recognized that the *Miller* line of cases "has sent mixed messages about when a juvenile can be sentenced to JLWOP without violating the Eighth Amendment." *Id.* at 53a; *see id.* at 54a–58a (discussing the *Miller* trilogy and concluding they "are difficult to reconcile"); *see id.* at 61a–64a (citing lower court cases split over those mixed messages).

But in the dissent's view, it was "bound to follow the Supreme Court's most recent pronouncement in *Jones*." *Id.* at 59a. And the dissent understood *Jones* to mean that if a sentencing court "had discretion to impose a lesser sentence" and "was free to consider all mitigating factors, including Mullins's youth and attendant circumstances," that was "all the *Miller* line of cases requires." *Id.* at 53a; *see id.* at 59a–60a (recognizing that "*Jones* creates confusion").

Thus, even a finding of permanent incorrigibility would not "preclude a JLOWP sentence" because "a JLWOP sentence is not categorically unconstitutional when imposed on a juvenile who the court views as redeemable." *Id.* at 61a, 64a. It was therefore unnecessary "to decipher the sentencing court's remark about 'a chance to change,'" because "[e]ven if the sentencing court believed that Mullins had the capacity to change, it would not render Mullins's sentence unconstitutional." *Id.* at 65a.

Argument

The Court Should Resolve the Split of Authority on Whether the Eighth Amendment Prohibits Life Without Parole When a Juvenile is Capable of Change.

In *Miller v. Alabama*, the Court held "that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 567 U.S. at 470. That's because "children are constitutionally different from adults for purposes of sentencing" in many ways, including their "capacity for change." *Id.* at 471–74. And "mandatory penalty schemes . . . prevent the sentencer from taking account of these central considerations." *Id.* at 474.

Then, in *Montgomery v. Louisiana*, the Court held that *Miller* announced a substantive rule of constitutional law that applied retroactively. 577 U.S. at 206–10. In so doing, the Court appeared to contradict *Miller*. Whereas the Court in *Miller* made clear that its holding "does not categorically bar a penalty for a class of offenders," 567 U.S. at 483, the Court in *Montgomery* declared that *Miller* did just the opposite: "it rendered life without parole an unconstitutional penalty for a 'class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth," 577 U.S. at 208 (citation omitted). Noting this inconsistency, a three-justice dissent accused the majority of "not applying *Miller*, but rewriting it." *Montgomery*, 577 U.S. at 224–25 (Scalia, J., dissenting).

Just five years later, the Court granted certiorari in *Jones v. Mississippi*, "[i]n light of disagreement in state and federal courts about how to interpret *Miller* and *Montgomery*." 593 U.S. at 104. There, the Court

answered only whether a sentencing court "must make a finding of permanent incorrigibility." *Id.* at 101. The Court held that *Miller* and *Montgomery* were at least in agreement on that point: "a finding of fact regarding a child's incorrigibility . . . is not required" before imposing JLWOP. *Id.* at 104–05 (quoting *Montgomery*, 577 U.S. at 211).

But by limiting its holding to only whether a finding regarding incorrigibility was "required," the Court did not squarely resolve the inconsistency in *Miller* and *Montgomery* about what sentencing courts may do when there *is* a finding that a juvenile is capable of change. *Id.* at 113.

If anything, *Jones* compounded the confusion. On one hand, the Court declared that *Miller* "mandated 'only that a sentencer follow a certain process—considering an offender's youth and attendant circumstances—before imposing' a life-without-parole sentence." *Id.* at 101 (quoting *Miller*, 567 U.S. at 483). But on the other hand, it recited a contradictory "key paragraph from *Montgomery*": "That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.* at 106 n.2 (quoting *Montgomery*, 577 U.S. at 211).

Later, the Court again emphasized the contradiction. First, it described *Miller* as clearly stating that the "decision does not categorically bar a penalty for a class of offenders or type of crime," rather, it simply "held that a sentencer must have discretion to consider youth before imposing a life-without-parole sentence." *Id.* at 108–09 (quoting *Miller*, 567 U.S. at 483).

But then it also stated that "*Montgomery* was clear" that the discretionary sentencing procedure "is necessary to separate those juveniles *who may be sentenced* to life without parole from those *who may not*." *Id.* at 111 (quoting *Montgomery*, 577 U.S. at 210) (emphasis added).

A divided Court in *Jones* disagreed on what this all meant. The majority claimed it "carefully follows both *Miller* and *Montgomery*" without overruling either of them. *Id.* at 118. A three-justice dissent contended that the majority "distort[ed]" those cases "beyond recognition." *Id.* at 133 (Sotomayor, J., dissenting). While Justice Thomas believed that "the decisions cannot be reconciled" because of the contradiction, and that the majority "[o]verrule[d] *Montgomery* in substance but not in name." *Id.* at 123–27 (Thomas, J., concurring in the judgment). To the majority, it was merely a "good-faith disagreement . . . over how to interpret *Miller* and *Montgomery*." *Id.* at 118.

Regardless of how one describes the inconsistency, lower courts are left to pick up the pieces and try to fit them together. Several years after *Jones*, state and federal courts are split on the question presented here: can a sentencing court still impose JLWOP even if the court explicitly or implicitly finds the juvenile defendant is capable of change and reform?

The confusion has resulted in a deep and persistent split of authority that cannot be resolved without this Court's intervention. And the question is at the heart of the divided Utah Supreme Court decision here, making this case an ideal vehicle to address it.

A. Lower courts are split on how to reconcile this Court's holdings in *Miller*, *Montgomery*, and *Jones*.

The inconsistency between *Miller*, *Montgomery*, and *Jones* has created a split among lower courts.[4]

1. Several courts read *Miller* and its progeny as completely barring JLWOP for juveniles who are not permanently incorrigible.

The Utah Supreme Court, as noted, falls in this camp. Pet. App. 43a (reading *Miller*, *Montgomery*, and *Jones* to mean that "if a child is capable of change and reform—that is, is not incorrigible—a JLWOP sentence *is* disproportionate and unconstitutional"). The court noted "a sentencing court has no obligation to make an on-the-record finding of permanent incorrigibility before imposing a JLWOP sentence," but if a sentencing court does find "that a juvenile offender can change, a JLWOP sentence is unconstitutional." *Id.*[5]

So even though the sentencing court considered Mullins's youth as part of the discretionary sentencing proceeding, the Utah Supreme Court still vacated his JLWOP sentence out of concern that Mullins was not incorrigible. *Id.* at 44a–52a.

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[4] This includes courts that have held, or at least assumed without deciding, that *Miller* and its progeny apply to "de-facto" JWLOP sentences—lengthy terms of years that are likely to last most if not all of a juvenile's life before parole eligibility.

[5] The majority recognized that other state courts "are divided over the proper interpretation of these difficult cases." Pet. App. 43a (citing cases).

A minority of other jurisdictions—Alaska, Maryland, Michigan, Minnesota, North Carolina, Wyoming, and the Second Circuit—agree with the Utah Supreme Court majority.

Maryland's highest court, after reviewing the decisions in *Miller*, *Montgomery*, and *Jones*, believed this "Court did not have occasion to address a situation in which a sentencing court finds that a crime was the result of the offender's transient immaturity but nonetheless sentences the offender to life without parole." *Malvo v. State*, 281 A.3d 758, 765 (Md. 2022). Pointing to *Jones*'s careful effort not to overrule either *Miller* or *Montgomery* and its quotation of *Montgomery*'s "key paragraph," Maryland concluded that "an offender deemed corrigible cannot constitutionally be sentenced to life without the possibility of parole." *Id.* (quoting *Jones*, 593 U.S. at 106 n.2).

The Supreme Court of North Carolina ruled similarly. It concluded that "the Eighth Amendment categorically prohibits a sentencing court from sentencing any juvenile to life without parole if the sentencing court has found the juvenile to be 'neither incorrigible nor irredeemable.'" *State v. Kelliher*, 873 S.E.2d 366, 380 (N.C. 2022); *see id.* ("*Jones* does not alter the substantive Eighth Amendment rule announced in *Miller* and *Montgomery* which forbids a sentencing court from sentencing redeemable juveniles to life without parole."). And because the sentencing court "affirmatively found that [the juvenile defendant] was 'neither

incorrigible nor irredeemable,' he could not constitutionally receive [that] sentence." *Id.* at 370.[6]

The Alaska Court of Appeals believed that the "categorization of juvenile offenders into two groups—the 'transient immaturity' juveniles for whom a sentence of life without parole would violate the Eighth Amendment and the 'irreparable corruption' juveniles whose life without parole sentences would not violate the Eighth Amendment—survives *Jones*." *Fletcher v. State*, 532 P.3d 286, 307 (Alaska Ct. App. 2023). So "sentencing a juvenile offender whose crime reflects transient immaturity to life without parole violates" both the Alaska and "the federal constitution." *Id.*

The Supreme Court of Michigan likewise concluded, one year after *Jones*, that "*Miller*'s substantive holding is that LWOP is an excessive sentence for children whose crimes reflect transient immaturity." *People v. Taylor*, 987 N.W.2d 132, 139 (Mich. 2022); *see id.* at 139–44 (discussing Michigan statute enacted "to implement that substantive guarantee" by creating presumption that a juvenile defendant "has engaged in criminality because of transient immaturity, not irreparable corruption," which prosecutors must rebut before JLWOP may be imposed).

And the Second Circuit understood *Montgomery* to impose a flat ban: "a life-without-parole sentence is permissible only for 'the rarest of juvenile offenders'—specifically, 'those whose crimes reflect permanent incorrigibility' and 'irreparable corruption.'" *United*

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[6] *But see State v. Sims*, 912 S.E.2d 767, 780 (N.C. 2025) ("[A] sentencing court must simply consider youth and its attendant circumstances in light of the defendant's crime. *Miller* requires no more.")

States v. Delgado, 971 F.3d 144, 158 (2nd Cir. 2020) (quoting *Montgomery*, 577 U.S. at 209). And even though the sentencing court implicitly considered the defendant's youth along with all other statutory sentencing factors, the Second Circuit still reversed his JLWOP sentence because the district court did not give "deliberate consideration" of his youth. *Id.* at 159.[7]

Other courts have similarly interpreted the *Miller* trilogy as drawing an Eighth Amendment line between transient immaturity and irreparable corruption. *See State v. McInnis*, 962 N.W.2d 874, 882 n.3 (Minn. 2021) (stating that although *Jones* does not require a finding of permanent incorrigibility, a *Miller* hearing is where "a district court determines whether a juvenile is irreparably corrupt"); *Davis v. State*, 415 P.3d 666, 682 (Wyo. 2018) (holding, pre-*Jones*, that under *Miller*, the State had the burden to prove "beyond a reasonable doubt that the juvenile offender is irreparably corrupt").

2. In contrast, a majority of courts agree that even corrigible juvenile offenders may be sentenced to JLWOP, because *Jones* requires only that a sentencing court consider the offender's youth and has discretion to impose a lesser sentence.

The *Mullins* dissent, as noted, read literally *Jones*'s holding "that permanent incorrigibility is not 'an eligibility criterion' for JLWOP and that 'a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient.'" Pet.

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[7] Although decided before *Jones*, this appears to be the Second Circuit's last word on the matter as it has not decided another JLWOP case since *Jones*.

App. 59a (quoting *Jones*, 593. U.S. at 105, 107–09). In other words, "all the *Miller* line of cases requires" is the freedom to consider "youth and attendant circumstances" and the "discretion to impose a lesser sentence" than life without parole. *Id.* at 53a. That's true regardless of a sentencing court's commentary about the juvenile's capacity for change and even for "a juvenile who the court views as redeemable." *Id.* at 64a–65a.

At least sixteen other jurisdictions—Alabama, Arizona, Arkansas, Georgia, Illinois, Indiana, Kansas, Mississippi, Montana, Ohio, Oklahoma, Pennsylvania, South Carolina, Wisconsin, and the Third and Ninth Circuits—agree with the *Mullins* dissent that consideration of youth is all that *Miller* and its progeny require, regardless of the juvenile's corrigibility status.

Indeed, the Third Circuit squarely held that "individualized consideration is all that *Miller* requires." *United States v. Grant*, 9 F.4th 186, 197 (3rd Cir. 2021). So even though the sentencing court "made a gratuitous corrigibility finding" it "does not invalidate [the juvenile's] sentence." *Id.* at 198; *see id.* at 197 ("gratuitous[]" finding "that a defendant is corrigible" may give rise to "an as-applied Eighth Amendment claim based on disproportionality"); *see also id* at 209, 212 (Greenway, J., concurring) (observing that *Jones* "does not resolve the question of what happens when an affirmative finding of corrigibility has been made").

The Ninth Circuit referred to *Montgomery*'s statement that JLWOP is unconstitutional "for all but . . . those whose crimes reflect permanent incorrigibility" as dicta. *United States v. Briones*, 35 F.4th 1150, 1153–54 (9th Cir. 2021) (quoting *Montgomery*, 577

U.S. at 208–09).[8] And it held that special analysis of evidence of rehabilitation and capacity for change "that would rule out permanent incorrigibility" was unnecessary because it would amount to an implicit finding, which "*Jones* flatly rejected." *Id.* at 1158 & n.5 (quotation simplified); *see also Helm v. Thornell*, 112 F.4th 674, 687 (9th Cir. 2024) (*Jones* clarified that "*Miller* requires a 'discretionary sentencing procedure,' but it does not require that a state court's weighing of the mitigating factors associated with youth be conducted in accordance with any particular *substantive* criteria of incorrigibility" (quoting *Jones*, 593 U.S. at 120–21)).

The Supreme Court of Arizona, overruling its pre-*Jones* precedent, rejected the contention that "a juvenile life-without-parole sentence that is the product of 'transient immaturity' is unconstitutional under *Miller*." *State ex rel. Mitchell v. Cooper*, 535 P.3d 3, 13 (Ariz. 2023). The court's "review of *Miller* and its progeny demonstrates that 'transient immaturity' is not a substantive component of *Miller*." *Id.* at 14. Sentencing courts need not distinguish between juveniles on either side of the corrigibility line. *Id.* at 14–15.

The Mississippi Supreme Court held that even if the evidence showed that a juvenile's "rehabilitation is not only possible but likely," such a conclusion "does not undermine the trial court's determination that [the juvenile's] life sentence should be without parole"

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[8] The Kentucky Supreme Court, before *Jones*, also concluded that the language in *Miller* and *Montgomery* "about the 'rare' juvenile offender whose crimes merit LWOP," was merely "dicta and guidance." *Phon v. Commonwealth*, 545 S.W.3d 284, 294 (Ken. 2018).

when weighed against other factors. *Johnson v. State*, 396 So.3d 1073, 1082 (Miss. 2024).

The Illinois Supreme Court overruled its pre-*Jones* precedent "holding that a juvenile offender's discretionary life sentence does not comport with the [E]ighth [A]mendment unless the sentencing court first makes a finding of permanent incorrigibility" because it was "*directly* at odds with the holding in *Jones*." *People v. Wilson*, 220 N.E.3d 1068, 1077 (Ill. 2023). The court upheld the defendant's JLWOP sentence even though the sentencing court acknowledged both an absence of evidence that he was "going to turn [his] life around," and also the chance that he "can prove [the court] wrong" while in prison. *Id.* at 1078.

And the Supreme Court of Pennsylvania also relied on *Jones* to reverse its prior understanding of *Miller* and *Montgomery* "that a juvenile homicide offender cannot constitutionally receive a sentence of life without parole unless he or she is proven to be permanently incorrigible." *Commonwealth v. Felder*, 269 A.3d 1232, 1246 (Penn. 2022). It now holds that "the authority of a sentencing court to impose life-without-parole sentence on a juvenile homicide offender is circumscribed only . . . by *Miller*'s command to 'consider the mitigating qualities of youth.'" *Id.* at 1245 (quoting *Miller*, 567 U.S. at 476). Thus, "no viable *Miller* claim exists" as long as the court had discretion to consider youth and impose a lesser sentence than JLWOP. *Id.* at 1243.

Many other courts have reached similar conclusions about how to interpret the *Miller* trilogy. *See State v. Smart*, 889 S.E.2d 573, 576 (S.C. 2023) (statements from *Miller* discussing "juveniles who do not deserve [JLWOP] and those who do . . . . were not meant

to suggest a presumption against life without parole or that any burden must be placed on the State"); *Elliott v. State*, 653 S.W.3d 776, 780 (Ark. 2022) (holding that when jury is deciding between JLWOP and lesser punishments "a jury instruction on the issue of permanent incorrigibility or irretrievable depravity was not required"); *Conley v. State*, 183 N.E.3d 276, 284 (Ind. 2022) (recognizing that in some cases "even considering the notable differences between juveniles and adults, the juvenile's crimes are so reprehensible and heinous that an LWOP sentence would be appropriate"); *State v. Keefe*, 512 P.3d 741, 747 (Mont. 2022) ("*Miller* and its progeny do not stand for the proposition that a juvenile homicide offender is constitutionally entitled to any specific term of years if found not to be irreparably corrupt."); *State v. Morris*, 222 N.E.3d 568, 571 (Ohio 2022) (holding "assessing that a defendant is permanently incorrigible is not the same thing as considering a defendant's youth as a mitigating factor"; "there is no basis to conflate the two concepts" and *Jones* requires only the latter); *State v. Walker*, 2022 WL 1574255, *2 (Wis. Ct. App. Jan. 25, 2022) (unpublished) (holding de-facto JLWOP sentence "not contrary to *Miller* or *Montgomery*" despite sentencing court's "expressed 'hope'" for change in future because "the sentencing court gave more weight to other factors" than to "Walker's age and its attendant circumstances"); *Wynn v. State*, 354 So.3d 1007, 1037 (Ala. Crim. App. 2021) (concluding *Jones* "made it clear that irreparable corruption is not the determining factor of the constitutionality of a sentence"); *Homes v. State*, 859 S.E.2d 475, 479–80 (Ga. 2021) (affirming JLWOP because youth was considered despite sentencing court saying both that JLWOP was "only deserving" when court "doesn't feel

there's any redeeming part to an individual," and that the court "regret[ed] it"); *Williams v. State*, 500 P.3d 1182, 1184–87 (Kan. 2021) (rejecting lower court ruling that youth was not "adequately" considered at pre-*Miller* sentencing because *Jones* requires only discretionary sentencing without imposing specific method for considering or weighing youth); *White v. State*, 499 P.3d 762, 769 (Okla. 2021) ("*Jones* makes clear that [permanent incorrigibility] is neither an eligibility factor nor a factual predicate to a life-without-parole sentence but, instead, is a mere sentencing factor.").

3. Still other courts that were not required to reconcile *Miller*, *Montgomery*, and *Jones* to decide the cases before them, have expressed confusion about the inconsistencies.

The Seventh Circuit considered a habeas petition challenging the Wisconsin Court of Appeals' application of *Miller*, *Montgomery*, and *Jones*. *Walker v. Cromwell*, 140 F.4th 878, 881–82 (7th Cir. 2025). The juvenile contended that the sentencing judge, by "express[ing] 'hope' that [the juvenile] would be able to develop healthy relationships and grow as a person while he was incarcerated," acknowledged that the juvenile "was capable of reform" and therefore could not be sentenced to "de facto life without parole." *Id.* at 883–84, 892 n.4.

The Seventh Circuit believed "the shifting rationales of *Miller*, *Montgomery*, and *Jones*" had "left unsettled whether the Eighth Amendment categorically forbids life without parole for corrigible juvenile homicide offenders." *Id.* at 888. The court reasoned: "Even if no factual finding of permanent incorrigibility is required, it does not necessarily follow that a sentencing judge could find a juvenile homicide offender capable

of change and still sentence him to life without parole." *Id.* at 892. But because the case was brought under habeas review, the court merely concluded that the state court's application of those cases was not unreasonable because the law "simply is not clear." *Id.* at 892–93.

And the Oregon Court of Appeals, citing the fact that "*Jones* expressly did not overrule *Miller* and *Montgomery*," believed it "somewhat unclear under what circumstances we would conclude that a sentencing court failed to *adequately* consider a juvenile offender's youth." *Harned v. Amsberry*, 499 P.3d 825, 832 (Or. Ct. App. 2021) (emphasis added). And the court specifically noted cases—similar to Mullins's—where sentencing occurred before *Miller* when courts were not "clearly on notice to consider youth." *Id.*

B. The Utah Supreme Court's divided opinion presents an ideal vehicle to resolve the split of authority.

This case squarely presents an ideal vehicle to address the nationwide confusion and split of authority left unresolved after *Jones*.

First, this case directly addresses the legal question presented and underscores the ongoing divergent views about the correct answer. As stated, the Utah Supreme Court divided 3-2 over the issue—how to reconcile *Miller*, *Montgomery*, and *Jones* when there is a finding, or at least a suggestion, that a juvenile is capable of change. The majority and dissenting opinions each took a side, identified supporting jurisdictions, and explained their rationale. The issue has been teed up perfectly—and has been percolating around the country long enough—for the Court to resolve the split of authority.

This case also presents an ideal vehicle factually. Mullins was sentenced under a discretionary statutory scheme. The sentencing court had discretion to impose a lesser sentence—life *with* parole—in lieu of JLWOP. Utah Code Ann. § 76-3-207(4)(c) (West 2001). The statute specifically identified "the youth of the defendant at the time of the crime" as a mitigating circumstance. *Id.* § 76-3-207(3)(e). And that factor was addressed in the psychologist's in-depth report that specifically discussed Mullins's age and immaturity and related factors, R259–311, as well as in Mullins's arguments at the hearing, Pet. App. 95a–113a.

If the *Mullins* dissent—along with the majority of other jurisdictions in agreement—correctly reasoned that consideration of youth is all that *Miller* and its progeny require, regardless of a juvenile's corrigibility status, then Mullins's sentence was lawfully imposed, and this Court can simply reverse the Utah Supreme Court.

On the other hand, if the *Mullins* majority is correct—that an implicit finding that a juvenile is capable of change and reform prohibits a JLWOP sentence—then this Court can affirm. Either way, answering the question presented will squarely resolve this case while also providing an answer that other courts can easily apply to future cases.[9]

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[9] The Utah Supreme Court vacated Mullins's sentence under a prior version of rule 22(e), Utah Rules of Criminal Procedure, on the ground that Mullins's sentence was "imposed in an illegal manner." Pet. App. 47a; *see* Utah R. Crim. P. 22(e) (2013). But the basis for the majority's conclusion—and the dissent's disagreement—was the majority's interpretation and application of *Miller*, *Montgomery*, and *Jones*, without which the court would

C. Resolving the split of authority is a matter of profound national importance.

Answering the question presented is nationally important. Juveniles unfortunately continue to commit murder. Many states still permit and impose JLWOP for that heinous crime. And sentences long since imposed, like Mullins's, continue to be challenged under *Miller*, *Montgomery*, and *Jones*. The confusion and inconsistency about how to reconcile these important cases will keep festering and spreading in the future unless and until this Court addresses the issue head on.

Granting certiorari will provide the Court the much-needed opportunity to set the record straight about the availability of JLWOP for juvenile murderers when sentencing courts find explicitly or implicitly that a juvenile has the capacity for change.

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not have vacated the conviction under the rule. Pet. App. 37a–43a. So the application of the state rule of procedure does not present a state-law vehicle problem. Indeed, this Court granted certiorari in *Montgomery* after the petitioner's motion to correct an illegal sentence under Louisiana's version of rule 22(e). *See Montgomery*, 577 U.S. at 195–96.

Conclusion

The Court should grant the petition for writ of certiorari to resolve the split of authority concerning the Eighth Amendment standard for imposing JLWOP on juvenile murders.

Respectfully submitted,

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APPENDIX

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APPENDIX A — AMENDED OPINION OF THE SUPREME COURT OF THE STATE OF UTAH, FILED NOVEMBER 20, 2025

AMENDED OPINION*
2025 UT 57

IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH,

Appellee,

v.

MORRIS THOMAS MULLINS,

Appellant.

No. 20200149
Heard October 18, 2023
Filed November 20, 2025

On Direct Appeal

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* The State filed a petition for rehearing after we published our original opinion, and we called for a response. We grant the petition for the limited purpose of clarifying our analysis in paragraphs 2, 24–26, 37, 86, and Part II.F generally. We modify internal cross-references accordingly. The dissent has made concomitant changes in paragraphs 87, 103, and 112. In all other respects the petition is denied.

Appendix A

Sixth District Court, Sevier County
The Honorable Marvin D. Bagley
No. 011600140

CHIEF JUSTICE DURRANT authored the opinion of the Court, in which ASSOCIATE CHIEF JUSTICE PEARCE and JUSTICE PETERSEN joined.

JUSTICE HAGEN authored an opinion concurring in part and dissenting in part, in which JUSTICE POHLMAN joined.

CHIEF JUSTICE DURRANT, opinion of the Court:

INTRODUCTION

¶1 Morris Mullins pled guilty to aggravated murder and was sentenced to life without parole (LWOP). Because he was seventeen years old when he committed the crime, this is a juvenile life without parole (JLWOP) sentence. Now, at age forty and having already spent more than two decades in prison, Mullins challenges his sentence as unconstitutional. He brings seven state and federal constitutional challenges, among them that his sentence was cruel and unusual in violation of the Eighth Amendment to the United States Constitution and article I, section 9 of the Utah Constitution.

¶2 We do not reach three of Mullins's claims because they were not properly brought under rule 22(e) of the Utah Rules of Criminal Procedure. Of the claims we do reach, we conclude that Mullins succeeds on only

one. After Mullins was sentenced, the United States Supreme Court decided a series of cases concluding that it is unconstitutional to sentence juvenile offenders who are not permanently incorrigible to JLWOP. Here, we conclude that, because the record contains ambiguous comments by the sentencing court indicating a significant risk that the court misapprehended its constitutional obligation to properly consider Mullins's youth, the court imposed the sentence in an illegal manner under rule 22(e). Accordingly, we vacate Mullins's sentence and remand his case to the district court for resentencing.

BACKGROUND

¶3 In May 2001, Mullins killed a seventy-eight-year-old widow, Amy Davis, in her home. Mullins was seventeen at the time. The State charged him as an adult with rape and aggravated murder. Mullins pled guilty to aggravated murder in exchange for the State dropping the rape charge and taking the death penalty off the table.

¶4 At sentencing, the parties presented dueling evidence about whether Mullins should receive JLWOP or life with the possibility of parole. The prosecution focused on the heinousness of Mullins's crime and on his actions and statements in jail that indicated a continuing desire to inflict violence on women for pleasure. Several of the victim's family members testified about the impact of the killing, asking the court to impose JLWOP.

¶5 The defense presented mitigating evidence, largely based on a psychological evaluation conducted by a clinical

and forensic psychologist. Defense counsel remarked that Mullins had "the most profoundly dysfunctional upbringing and rearing and family life that . . . members of the defense team ha[d] ever seen, and that says a lot." He stated that Mullins's removal from that dysfunctional environment gave him "some hope that Mr. Mullins c[ould] turn things around." Counsel also stated that Mullins had been discouraged from interacting with anyone outside his small and dysfunctional community, had an IQ well below average, suffered physical abuse by his parents, witnessed severe alcohol abuse by his parents, struggled with impulsivity, and was taught and rewarded for antisocial behavior as a child.

¶6 At the end of the hearing, the district court sentenced Mullins from the bench to JLWOP. The judge stated that he had read the submitted reports, heard the family members' statements, and listened to counsel's arguments. The judge recognized that Mullins's life had been "chaotic" so far, but, upon balancing "the family's requests and Mr. Mullins'[s] request and the need to send a message," the judge determined that JLWOP was the requisite punishment. The judge concluded the hearing by addressing Mullins directly, stating: "[I]f you're gonna be with us for a long time and have a chance to change, I hope—not under the present circumstances—I'm hoping you'll find some way to be productive."

¶7 More than a decade later, in April 2013, Mullins filed a pro se motion to correct an illegal sentence under rule 22(e) of the Utah Rules of Criminal Procedure in the district court. He based his challenge on "new law"

created in *Miller v. Alabama*, in which the United States Supreme Court held that mandatory JLWOP violated the Eighth Amendment because it did not allow a sentencing judge to consider the juvenile's "lessened culpability and greater capacity for change."[1] Mullins's petition asserted that (1) his JLWOP sentence was unconstitutional because there was "no record indicating that the court took into consideration [his] youth"; and (2) because it was unconstitutional to sentence him to the death penalty, it was also unconstitutional for the State to offer to take the death penalty off the table "in exchange for [him] pleading guilty to aggravated murder." Mullins also generally discussed *Miller* and the line of cases leading to that decision.[2]

¶8 The district court appointed counsel to argue Mullins's 22(e) motion. The State stipulated to the appointment, so long as counsel did not "change the issue in dispute or expand the scope of the litigation." At the motion hearing, Mullins's counsel relied on Mullins's original petition to argue that the court did not appropriately consider Mullins's youth as required by *Miller*. He also argued that the court should have made specific findings as to Mullins's incorrigibility. The State countered that Mullins "may [have been] a juvenile at the time he committed the crime, but the process was followed

1. 567 U.S. 460, 465 (2012) (cleaned up); *see also Tison v. Arizona*, 481 U.S. 137, 156 (1987) ("[T]he more purposeful is the criminal conduct, the more serious is the offense").

2. *See Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *Miller*, 567 U.S. 460.

and he was a juvenile who was in adult court and he was treated like an adult." Regardless, the State argued, the sentencing scheme was discretionary, so *Miller* did not apply.

¶9 In November 2016, the district court denied Mullins's motion. It characterized his claims as follows: (1) JLWOP is categorically unconstitutional, and (2) a sentencing court must justify its sentence with findings on the record. The court then rejected both arguments based on *Miller* and *State v. Houston*.[3] Under the Utah Rules of Appellate Procedure, Mullins had thirty days to file a direct appeal.

¶10 In May 2018, well after the thirty-day cutoff period, new counsel for Mullins petitioned the district court to reinstate the time to appeal the denial of his 22(e) motion. Mullins asserted that his previous appointed counsel had been constitutionally ineffective. Specifically, he stated that his previous attorney told him that he would appeal if the court denied his 22(e) motion. But when the district court denied the motion, previous counsel did not appeal or tell Mullins of the denial, which, Mullins argued, led to his untimely appeal. The State stipulated to the motion to reinstate the time to appeal, and the district court granted it. In February 2020, Mullins appealed the denial of his 22(e) motion. We retained the case to hear the appeal directly.

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3. *See Miller*, 567 U.S. 460; *State v. Houston*, 2015 UT 40, ¶¶ 32, 52–63, 353 P.3d 55.

Appendix A

STANDARD OF REVIEW

¶11 Mullins brings his challenges under rule 22(e) of the Utah Rules of Criminal Procedure, which governs challenges to illegal sentences. We review district court decisions on challenges to illegal sentences "for correctness and grant[] no deference to the district court."[4]

¶12 Mullins also raises some challenges to his sentence that he did not raise before the district court. We treat those claims as new 22(e) claims and reach them for the first time in this appeal.[5]

ANALYSIS

¶13 Mullins raises seven claims on appeal, arguing that (1) the sentencing court violated the Sixth Amendment to the United States Constitution when it increased the minimum sentence based on judicial factfinding; (2) the sentencing statute was unconstitutionally vague; (3) imposing a JLWOP sentence on an intellectually impaired juvenile violates the Eighth Amendment to the United States Constitution; (4) imposing JLWOP on an intellectually impaired juvenile violates article I, section 9 of the Utah Constitution; (5) JLWOP sentences are categorically unconstitutional under article I, section 9 of the Utah Constitution; (6) JLWOP sentences are categorically unconstitutional under the Eighth Amendment to the United States Constitution; and

4. *State v. Houston*, 2015 UT 40, ¶ 16, 353 P.3d 55.

5. *See infra* ¶¶ 39, 46, 51, 55.

(7) a JLWOP sentence was unconstitutional under the Eighth Amendment as applied to his case.

¶14 As a threshold issue, we must determine whether the legal vehicle Mullins uses to challenge his sentence, rule 22(e) of the Utah Rules of Criminal Procedure, allows us to reach the merits of his claims. As explained below, amendments to rule 22(e) during the pendency of the current litigation complicate that analysis. We begin by discussing how each version of rule 22(e) operates. We then analyze Mullins's claims under the appropriate version of the rule and ultimately vacate Mullins's JLWOP sentence based on his as-applied Eighth Amendment claim.

I. ANALYSIS UNDER RULE 22(e) OF THE UTAH RULES OF CRIMINAL PROCEDURE

¶15 Mullins brings his claims under rule 22(e) of the Utah Rules of Criminal Procedure. This subparagraph of rule 22 governs when a court must correct a convicted criminal defendant's sentence. In 2019, we changed the rule's language significantly. Because the two versions of the rule operate differently, the first step in our 22(e) analysis asks which version of the rule applies to each of Mullins's seven claims—some brought in his original motion and others brought for the first time on appeal. We outline the framework for making this determination first. We then identify the requirements for bringing a challenge under each version of the rule.

A. We Evaluate Each Claim Based on the Version of Rule 22(e) in Effect When the Claim Was First Raised

¶16 Mullins filed his original 22(e) motion in 2013 under the rule as it existed at that time (old rule).[6] But he did not appeal the district court's denial of that motion until 2020, after changes to the rule had taken effect (new rule).[7] He argues that because he filed his original 22(e) motion before the rule changed, all claims—even those the State argues were raised for the first time on appeal, after the amendment took effect—should be subject to the old rule.

¶17 The State sees this issue differently. It argues that all of Mullins's claims should be subject to the new rule. According to the State's logic, because none of Mullins's claims on appeal were included in his original motion, we should treat his appeal as the equivalent of a new 22(e) motion and apply the new rule to all his claims on appeal.

¶18 The law governing appellate review of a legal event is "the law as it exists at the time of the event regulated by the law in question."[8] This "analysis may be applied

6. *See* UTAH R. CRIM. P. 22(e) (2013).

7. *See id.* (2020). Because the rule has not been amended since Mullins filed his appeal in 2020, we refer to the current version throughout our analysis. *See id.* (2025).

8. *State v. Clark*, 2011 UT 23, ¶ 13, 251 P.3d 829.

to either statutes or rules."[9] Thus when determining which version of a rule applies, the relevant questions are "what 'event' is being regulated by the [rule] in question and, further, when that event occurred."[10] The State and Mullins disagree about what the regulated event is. Mullins believes the regulated event is filing a 22(e) motion. In other words, Mullins argues that because he filed his original motion when the old rule was in effect, that rule should govern all claims before us now, even claims not raised below. The State believes that the regulated event is raising a 22(e) claim. So the State contends that any claims not presented in the original rule 22(e) motion should be governed by the new rule. We agree with the State.

¶19 When a law or rule regulates a substantive right, the relevant event is the parties' "underlying primary conduct."[11] When the relevant law regulates procedure, the relevant event is the "underlying procedural act."[12] Both parties assume that rule 22(e) is procedural, and, without deciding the issue, we follow their lead. Because we assume rule 22(e) is procedural, the "regulated event" is the underlying procedural act that the rule governs.

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9. *Beaver Cnty. v. Utah State Tax Comm'n*, 2010 UT 50, ¶ 10 n.5, 254 P.3d 158.

10. *O'Connor v. Labor Comm'n*, 2020 UT App 49, ¶ 11, 463 P.3d 85.

11. *Jones v. Mackey Price Thompson & Ostler*, 2020 UT 25, ¶ 49, 469 P.3d 879 (cleaned up).

12. *Id.* (cleaned up).

¶20 At first blush, the relevant procedural event appears to be the filing of a 22(e) motion, as Mullins suggests. But under both versions of the rule, a defendant may sometimes bring a challenge for the first time on appeal.[13] This means that Mullins's interpretation fails because not all rule 22(e) challenges will stem from a 22(e) motion. The relevant "regulated event," then, is raising the individual claim that challenges a sentence, as the State argues.

¶21 As applied to this case, this means that any claims brought in Mullins's original motion—before the rule was amended—are governed by the old rule. Any claims brought for the first time on appeal—after the rule was amended—are governed by the new rule. Mullins filed his original motion pro se in 2013. The district court then appointed him counsel for argument. But the court limited the scope of the arguments appointed counsel could make to only those contained in Mullins's original motion. We thus look to both Mullins's pro se motion and his counsel's arguments at the motion hearing to understand which claims Mullins brought in his original motion and which claims are therefore governed by the old rule.

13. *See State v. Houston*, 2015 UT 40, ¶ 20, 353 P.3d 55 (holding that under the old rule, an appellate court may vacate an illegal sentence based on an argument raised for the first time on appeal); *see also infra* ¶¶ 29–31, 36 (explaining that under the new rule, a defendant may raise an unpreserved challenge to a sentence on appeal if a preservation exception applies).

B. The Old Rule and the New Rule Impose Distinct Requirements

¶22 Having established that we apply the version of rule 22(e) in effect when the defendant first raised each claim, we now explain the requirements of the old rule and the new rule.

¶23 The old rule provided: "The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time."[14] Generally, we will not hear an argument that an appellant did not first raise before the district court.[15] But, because of the "sweeping language" of the old rule,[16] we have held that the typical "preservation rules do not apply in the context of [an old rule] challenge."[17] So we may still hear a challenge brought

14. Utah R. Crim. P. 22(e) (2013). We held in *State v. Candedo* that the old rule "is sufficiently broad" to permit challenges based on "constitutional violations that threaten the validity of the sentence." 2010 UT 32, ¶ 14, 232 P.3d 1008, *superseded by rule on other grounds as stated in State v. Robinson*, 2023 UT 25, ¶¶ 17–18, 540 P.3d 614. "[I]f an offender's sentence is unconstitutional, the sentence is not authorized by the judgment of conviction, and is therefore illegal." *Id.* ¶ 13 (cleaned up). This court may reach the merits of a constitutional challenge under the old rule so long as the defendant "raises an articulable basis for challenging the constitutionality of [the] sentence," *id.* ¶ 14, and the claim satisfies the reviewability requirement, discussed below, *see infra* ¶¶ 24–27.

15. *State v. Johnson*, 2017 UT 76, ¶ 15, 416 P.3d 443.

16. *Candedo*, 2010 UT 32, ¶ 9 (cleaned up).

17. *Houston*, 2015 UT 40, ¶ 20.

under the old rule "even if the issue is raised for the first time on appeal."[18]

¶24 Despite falling within an exception to our traditional preservation rules, claims brought under the old rule must still satisfy another requirement. Out of concerns about abuse and in pursuit of judicial economy, we narrowed the scope and type of claims that could be brought under the old rule by requiring a 22(e) challenge to be "facial."[19] We defined "facial" in *State v. Houston* to mean that the challenge must seek to correct a defect in the sentence in a way that does not require further factual development in the district court.[20] This requirement served two purposes. First, it worked to keep out "fact-intensive challenge[s] to the legality of a sentencing proceeding asserted long after the time for raising [such challenges] in the initial trial or direct appeal" had expired.[21] Second, it allowed us to consider only claims that we could decide based on the record and arguments before us, thus avoiding the lengthy and inefficient process of remanding a case to district court for factfinding before the legality of the sentence could be decided.[22]

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18. *State v. Brooks*, 908 P.2d 856, 860 (Utah 1995).

19. *See State v. Prion*, 2012 UT 15, ¶¶ 20–22, 274 P.3d 919; *Houston*, 2015 UT 40, ¶ 27.

20. 2015 UT 40, ¶¶ 26–27; *see also Prion*, 2012 UT 15, ¶ 22.

21. *Houston*, 2015 UT 40, ¶ 23 (cleaned up).

22. *See id.* ¶ 27.

¶25 Though we used the terms "facial" and "as-applied" in *Houston*, a close inspection of our caselaw shows that in this context, the terms vary from their traditional meaning.[23] Under the traditional definition, a facial challenge asserts that a statute "always operates unconstitutionally."[24] In contrast, "as-applied" traditionally means a challenge to a statute only in "application to a particular party."[25] In *Houston*, we used the terms "facial" and "as-applied" to merely illustrate the difference between the types of analyses we intended to include in and exclude from the scope of the old rule. More precisely, the old rule excludes claims that would require us to remand a case for further factual development before determining the legality of the sentence or to resolve factual disputes ourselves.[26] Instead, under the old rule, we may consider only claims that raise "purely legal question[s]" in which the "pertinent facts are undisputed."[27]

¶26 Ultimately, the old rule allows review only of defects that "could easily be corrected without the need for factual development in the original trial court."[28] We acknowledge that the use of the terms "facial" and

23. *See id.* ¶ 26–27.

24. *Archuleta v. State*, 2020 UT 62, ¶ 35 n.3, 472 P.3d 950 (cleaned up).

25. *Id.* (cleaned up).

26. *See Houston*, 2015 UT 40, ¶ 27.

27. *Id.* (cleaned up).

28. *Id.* ¶ 24 (cleaned up).

"as-applied" in this slightly different context invites confusion. For clarity, in interpreting claims under the old rule, we will recharacterize the requirement as one of "reviewability": the old rule bars challenges that an appellate court cannot resolve without further factual development or factfinding while permitting challenges that are legal or resolvable based on the existing record before the appellate court.[29]

¶27 Under this definition, some claims that qualify as "as-applied" in the traditional sense will require further development of the record for us to make an informed

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29. We note that while the reviewability requirement limits the types of illegal sentences a court may consider and correct, the reviewability requirement does not mean that further factual development will never be required *after* an appellate court has "correct[ed]" an illegal sentence by vacating it. In some cases, the proper sentence will be clear, so an appellate court may vacate the illegal sentence and order a new one entered immediately. In other cases, the record and the law may show that the current sentence is illegal but not dictate the proper sentence. In those cases, an appellate court may vacate the sentence and remand for resentencing, including further factual development if needed.

To interpret the reviewability requirement otherwise would prevent appellate courts from correcting sentences "imposed in an illegal manner," *see* UTAH R. CRIM. P. 22(e) (2013)—cases in which the ultimate sentence might in fact have been permissible but the underlying sentencing proceedings were illegal. The only remedy in most such cases is remand for resentencing under the proper procedure, including additional fact-finding if necessary. We therefore conclude that the need for further factual development after the illegal sentence has been corrected by vacatur does not bar an appellate court from considering otherwise reviewable claims.

decision; the old rule excludes those fact-intensive claims. But other claims that would traditionally be defined as "as-applied" will require no further factual development and may be resolved by us on the undisputed facts in the record; the old rule permits us to hear those claims.[30]

¶28 Having established the requirements of the old rule, we turn to the new rule. We hold that the two key features of the old rule—the preservation exception and the reviewability requirement—do not carry over to the new rule for several reasons.

¶29 First, we address preservation. The old rule was silent on how a defendant could request the correction of an illegal sentence. It provided only that a court could correct

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30. *Houston* at first appears to support using the traditional definition of "facial" and "as-applied." *See* 2015 UT 40, ¶ 26. There, we implied that all as-applied challenges are, in fact, challenges to the "underlying conviction that rule 22(e) does not allow. *See id.* We looked to *State v. Telford*, suggesting that in *Telford* we rejected an as-applied claim solely because it was as-applied. *See id.* (citing *State v. Telford*, 2002 UT 51, ¶ 7, 48 P.3d 228 (per curiam), *superseded by rule as stated in Robinson*, 2023 UT 25, ¶¶ 19, 23)). But upon a careful reading of *Telford*, it becomes apparent that we did not hold in that case that all as-applied challenges attack the underlying conviction. Instead, we based our rejection of the as-applied claim in *Telford* solely on the ground that the claim challenged the underlying conviction, not the sentence. *See* 2002 UT 51, ¶ 7. This type of challenge is independently prohibited by the old rule. *See id.*; UTAH R. CRIM. P. 22(e) (2013). So *Telford* does not illuminate the contours of the reviewability requirement. And a better reading of our caselaw as a whole supports the reviewability requirement as articulated in this opinion.

an illegal sentence "at any time."[31] But subparagraph (e)(3) of the new rule imposes new procedural requirements for bringing a 22(e) challenge.[32] It states that "[a] *motion* under" several provisions of the rule "must be filed no later than one year from the date the facts supporting the claim could have been discovered"; under other provisions a motion "may be filed at any time."[33] Whereas the old rule made no mention of a motion,[34] the new rule dictates that claims be brought by motion.[35] Because rule 22(e) is found in the Utah Rules of Criminal Procedure—the rules governing "criminal proceedings" in most non-appellate courts of this state—we read subparagraph (e)(3) to govern motions filed with the district court.[36] The new rule thus provides that a defendant may bring a 22(e) challenge by filing a motion with the district court within the given time parameters.

¶30 With the new rule requirement that a defendant first file a 22(e) motion with the district court, we find it appropriate to apply our traditional preservation rules on appeal. Those traditional preservation rules include several exceptions that, in limited circumstances, allow a defendant to bring challenges directly to an appellate

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31. UTAH R. CRIM. P. 22(e) (2013).

32. *Id.* R. 22(e)(3) (2025).

33. *Id.* (emphasis added).

34. *See id.* R. 22(e) (2013).

35. *Id.* R. 22(e)(3) (2025).

36. *See id.* R. 1(b), (c).

court.[37] In sum, under the new rule, if a defendant seeks to raise on appeal a challenge to his sentence that he did not raise in his 22(e) motion before the district court, we will hear the unpreserved issue only if the defendant can show that an exception to preservation applies.

¶31 We pause to recognize that when Mullins appealed the denial of his 22(e) motion, we had not yet established that a 22(e) challenge under the new rule brought for the first time on appeal would be subject to our preservation requirements. Because of the unique circumstances of Mullins's case, we will not require him to show an exception to preservation for us to hear his claims under the new rule. Our inquiry into which version of rule 22(e) applies to each of Mullins's claims largely mirrors a preservation inquiry. As a result, once we have determined that the new rule applies to any of his claims, we will not require Mullins to separately show that a preservation exception also applies. But because this court does not typically find facts,[38] in Mullins's case we will reach only claims that we can resolve on the record before us. And we put future defendants who challenge their sentences as illegal on notice that they will need to show a preservation exception applies for any new 22(e) challenges brought for the first time on appeal.

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37. *See generally State v. Flora*, 2020 UT 2, ¶ 9, 459 P.3d 975 ("This court has recognized three distinct exceptions to preservation: plain error, ineffective assistance of counsel, and exceptional circumstances." (cleaned up)).

38. *See Carpenter v. Riverton City*, 2004 UT 68, ¶ 4, 103 P.3d 127 (per curiam) ("Because this court does not conduct evidentiary hearings . . . , it simply is not in a position to arrive at a legal ruling that is dependent on the resolution of disputed facts.").

¶32 Next, we consider whether the reviewability requirement from the old rule applies under the new rule—and conclude that it does not. Under the old rule, a defendant needed only to show that a claim was reviewable to establish that it was cognizable. But the new rule imposes several textual requirements that the old rule did not. As relevant here, the new rule requires that a motion relying upon new caselaw must be based on a new rule established by a binding appellate court.[39] The defendant must also show that the binding new rule was not "dictated by precedent existing at the time the defendant's conviction or sentence became final."[40]

¶33 We imposed the reviewability requirement under the old rule to prevent abuse and to promote judicial economy. But because the language of the new rule places different requirements on defendants in district court, we no longer need to impose this additional hurdle on appeal, for the reasons we explain below.

¶34 In contrast with the broad language of the old rule, the new rule defines what constitutes an illegal sentence. Subparagraph (e)(1) identifies "six specific categories of sentences that require correction," and subparagraph (e)(2) authorizes correction of an illegal sentence "only if the

39. UTAH R. CRIM. P. 22(e)(2) (2025).

40. *Id.* Because the State does not challenge any precedent on which Mullins relies based on the new rule's second factor, we assume for this opinion that if Mullins shows that a rule or ruling was established after he was sentenced, it was not dictated by precedent that existed at the time his sentence became final.

alleged constitutional violation is grounded in a rule or ruling that was established or issued after the defendant's 'sentence became final.'"[41] Because of this new language, the rule "shrank in scope," limiting the categories of sentences that a court could correct.[42] As a result, it is more difficult to engage in the type of abuse that raised concerns under the old rule.

¶35 Further, the new rule promotes judicial economy by requiring defendants to bring their 22(e) challenge before the district court in the first instance. There, the district court will be able to determine the relevant facts before we are asked to review the challenge on appeal. And if a defendant brings an unpreserved 22(e) challenge before us for the first time on appeal, that defendant must invoke an exception to preservation.[43] This preservation requirement serves the same judicial-economy purpose as the reviewability requirement, so we hold that defendants need not separately show that their challenge is purely legal or resolvable on the record.

¶36 In sum, based on the text of the rules, the requirements of the old and new rules are different. Under the old rule, traditional preservation rules did not apply to 22(e) challenges and defendants could not bring fact-intensive claims incapable of resolution on the record.

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41. *Robinson*, 2023 UT 25, ¶ 23 (quoting UTAH R. CRIM. P. 22(e)(2) (2019)).

42. *Id.* ¶ 22.

43. *See supra* ¶¶ 29–31.

Under the new rule, however, a defendant must file a 22(e) motion with the district court within the time constraints outlined in the rule. Because the rule requires defendants to file in the district court, traditional preservation rules apply to unpreserved 22(e) challenges on appeal. Thus, defendants raising a claim on appeal for the first time must show that an exception to preservation applies. We now apply this framework to each of Mullins's claims.

II. MULLINS'S SEVEN CLAIMS

¶37 Mullins raises seven claims on appeal: (1) the sentencing court violated the Sixth Amendment to the United States Constitution when it increased the minimum sentence based on judicial factfinding; (2) the sentencing statute is unconstitutionally vague; (3) imposing a JLWOP sentence on an intellectually impaired juvenile violates the Eighth Amendment to the United States Constitution; (4) imposing JLWOP on an intellectually impaired juvenile violates article I, section 9 of the Utah Constitution; (5) JLWOP sentences are categorically unconstitutional under article I, section 9 of the Utah Constitution; (6) JLWOP sentences are categorically unconstitutional under the Eighth Amendment to the United States Constitution; and (7) a JLWOP sentence was unconstitutional under the Eighth Amendment as applied to Mullins's case. We reject Mullins's first six claims. But we conclude that the judge's statements on the record here renders Mullins's JLWOP sentence one imposed in an illegal manner. We thus vacate Mullins's sentence based on his seventh claim and remand for resentencing in the district court.

A. The Sentencing Judge Did Not Violate the Sixth Amendment

¶38 On appeal, Mullins argues that his JLWOP sentence violates the Sixth Amendment. He asserts that the sentencing statute required the sentencing judge to engage in unconstitutional factfinding about whether JLWOP is "appropriate" rather than requiring that a jury unanimously find the sentence "appropriate" beyond a reasonable doubt.[44]

¶39 We first ask which rule applies to this claim. In his original motion, Mullins challenged the constitutionality of his sentence only under the Eighth Amendment. He never mentioned the Sixth Amendment. So the new rule applies to this claim. The State concedes that this claim meets all the requirements of the new rule and does not require further factual development.[45] Accordingly, we proceed to the merits of the claim.

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44. *See* UTAH CODE § 76-3-207(4)(c) (2001). The sentencing statute has since been amended several times and re-numbered; the relevant provision as modified is now housed in subsection (5). *See id.* § 76-3-207(5)(c) (2025). We refer throughout this opinion to the 2001 version unless otherwise noted. *See State v. Clark*, 2011 UT 23, ¶ 13, 251 P.3d 829 ("[W]e apply the law as it exists at the time of the event regulated by the law in question.").

45. As we noted above, because we announce for the first time today that our traditional preservation rules apply under the new rule, we do not require Mullins to prove a preservation exception exists for us to hear his claims under the new rule. *Supra* ¶ 31. Out of concerns about judicial economy and judicial competence, however, we limit our review in Mullins's case only to claims reviewable without further factual development. *Supra* ¶ 31. We emphasize, however, that the judicially imposed reviewability requirement applied to claims under the old rule does not apply to future claims brought under the new rule. *See supra* ¶ 33.

¶40 The Sixth Amendment to the United States Constitution guarantees individuals accused of a crime the right to a trial "by an impartial jury."[46] Taken "in conjunction with the Due Process Clause," this right "requires that each element of a crime be proved to the jury beyond a reasonable doubt."[47] "The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an element or ingredient of the charged offense."[48]

¶41 In *Apprendi v. New Jersey*, the United States Supreme Court established that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum" is an element of the crime that "must be submitted to a jury."[49] Then, in *Alleyne v. United States*, the Court extended this rule to facts that increase a mandatory minimum penalty.[50] But these cases "do[] not mean that any fact that influences judicial discretion must be found by a jury."[51] Nor do they mean that juries must find the facts "used to

46. U.S. CONST. amend. VI.

47. *Alleyne v. United States*, 570 U.S. 99, 104 (2013) (plurality opinion); *see also United States v. Gaudin*, 515 U.S. 506, 510 (1995).

48. *Alleyne*, 570 U.S. at 107 (plurality opinion) (cleaned up).

49. 530 U.S. 466, 490 (2000).

50. 570 U.S. at 103, 111–12.

51. *See id.* at 116.

guide judicial discretion in selecting a punishment within limits fixed by law."[52]

¶42 At the time of Mullins's sentencing, Utah Code subsection 76-3-207(4)(c) read, in relevant part: "The penalty of life in prison without parole shall only be imposed if the [sentencing judge] determines that the sentence of life in prison without parole is appropriate."[53] Mullins argues that, because the sentencing court "has discretion to impose LWOP only if it first" finds that "LWOP is appropriate," the court must make a factual finding beyond those facts admitted in a plea bargain. He contends that "LWOP can be imposed only after post-plea factual findings: that aggravators exist; that LWOP is appropriate." And for the court to make those findings, he argues, violates *Alleyne*.

¶43 We explained in *State v. Houston* that this provision of the sentencing statute did not violate the Sixth Amendment.[54] In that case, the defendant pled

52. *Id.* at 113 n.2 (cleaned up).

53. UTAH CODE § 76-3-207(4)(c) (2001). The statute uses "jury" in this provision but also indicates that when it uses "jury," "sentencing judge" may be substituted if the sentencing proceeding does not occur before a jury. UTAH CODE § 76-3-207(4)(a) (2001) ("The court or jury, as the case may be, shall retire to consider the penalty.").

54. 2015 UT 40, ¶¶ 30–32, 353 P.3d 55. By the time Houston was sentenced, the statute had been amended and re-numbered to place the operative provision in subsection (5). *Compare* Utah Code § 76-3-207(4)(c) (2001) *with* Utah Code § 76-2-207(5)(c) (2008). But the "appropriate[ness]" finding was identical between the two versions of the statute.

guilty to aggravated murder, punishable by "either life with the possibility of parole or LWOP."[55] This meant that "[t]here were no factual findings to be made by a jury, only a determination that LWOP would or would not be appropriate."[56] And although we decided this issue in *Houston* based solely on *Apprendi*, the logic remains unchanged under *Alleyne*.

¶44 When Mullins pled guilty to aggravated murder, the court did not and could not make any factual findings that would have "produced a higher range" of sentences beyond those already permitted by subsection 76-3-207(4).[57] So *Alleyne* does not apply. Mullins's plea exposed him to the possibility of two sentences: life with the possibility of parole and LWOP.[58] In choosing between those two options, the judge merely exercised "broad sentencing discretion" within the available statutory sentencing range.[59] Accordingly, we conclude that Mullins's sentencing process did not violate the Sixth Amendment.

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55. *Houston*, 2015 UT 40, ¶ 32.

56. *Id.*

57. *See Alleyne*, 570 U.S. at 116; UTAH CODE § 76-3-207(4)(a) (2001).

58. UTAH CODE § 76-3-207(4)(a) (2001).

59. *See Alleyne*, 570 U.S. at 116; *see also Houston*, 2015 UT 40, ¶ 32 ("By pleading guilty to aggravated murder, [Defendant] admitted all the facts relevant to the offense and became subject to any sentence authorized under Utah law. Under Utah's sentencing statute, a juvenile defendant guilty of aggravated murder can be sentenced to either life with the possibility of parole or LWOP.").

B. Utah Code Subsection 76-3-207(4) (2001) Is Not Unconstitutionally Vague

¶45 Mullins next argues that the sentencing statute is unconstitutionally vague in violation of due process.[60] At the time of Mullins's sentencing, section 76-3-207 required a judge or jury to determine that it was "appropriate" to sentence an offender to LWOP.[61] Mullins argues that the statute is vague because it does not sufficiently define "appropriate" or convey the constitutional importance of a juvenile's youth in that determination.[62]

¶46 As with his Sixth Amendment claim, Mullins did not mention constitutional vagueness in his original 22(e) motion. Again, he only discussed the Eighth Amendment. Accordingly, the new rule applies to this claim. And again, the State concedes that Mullins's vagueness claim complies with the requirements of the new rule and does not require further factual development, so we reach it on the merits.[63]

¶47 Sentencing statutes are unconstitutionally vague "if they do not state with sufficient clarity the consequences of violating a given criminal statute."[64]

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60. *See* UTAH CODE § 76-3-207(4) (2001).

61. *See id.* § 76-3-207(4)(a), (c) (2001).

62. *See id.*

63. *See supra* ¶¶ 31, 39 n.45.

64. *State v. Perea*, 2013 UT 68, ¶ 111, 322 P.3d 624 (quoting *United States v. Batchelder*, 442 U.S. 114, 123 (1979)).

Sentencing judges have long been afforded wide discretion in determining sentences, but such discretion does not render a sentencing statute unconstitutional.[65] Section 76-3-207 governs sentencing for capital felonies. Under the version of the statute applicable at the time of Mullins's sentencing in 2001, a court could impose LWOP only if it found that LWOP was "appropriate."[66]

¶48 Both parties acknowledge that we ruled on the vagueness of section 76-3-207 in *Houston*.[67] The State argues that *Houston* is controlling and dispositive. But Mullins contends that our reasoning in *Houston* was "not very compelling" because the statute "provides no meaningful guidance about how to weigh [aggravating and mitigating] factors against each other." Specifically, the statute does not identify the constitutional significance of a defendant's youth in the "appropriateness" consideration. As a result, he implicitly asks us to overturn our decision in *Houston*. Mullins does not, however, engage in the appropriate analysis for such a request.[68] As such, we decline to overturn *Houston*.

¶49 Additionally, Mullins argues that the federal legal landscape has changed since we decided *Houston*;

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65. *Id.* ¶¶ 114, 117.

66. Utah Code § 76-3-207(4)(a), (c) (2001).

67. *See* 2015 UT 40, ¶¶ 47–48.

68. *See Eldridge v. Johndrow*, 2015 UT 21, ¶¶ 20–41, 345 P.3d 553 (describing the framework through which this court considers whether to overrule its own precedents).

he specifically contends that the United States Supreme Court's holding in *Johnson v. United States* abrogates our holding in *Houston*.[69] In *Johnson*, the Court found unconstitutionally vague a mandatory sentencing scheme for offenders with prior convictions for violent crimes.[70] The statutory scheme's residual clause imposed a sentencing enhancement if the prior conviction "involve[d] conduct that presents a serious potential risk of physical injury to another."[71] The Court explained that the statute required courts to determine how much risk qualifies as "serious potential risk" and then apply it to the judge's "imagined ordinary case."[72] This intersection of a vague term being given meaning by an abstract and "wide-ranging" analysis led the Court to declare the statute unconstitutionally vague.[73]

¶50 But as the State points out, the Court's determination in *Johnson* turned on the *combination* of the "imagined ordinary case" analysis and the vagueness of the term "serious potential risk."[74] That case presented two layers of potential ambiguity that, together, violated due process. By contrast, the sentencing

69. *See Johnson v. United States*, 576 U.S. 591 (2015).

70. *Id.* at 593–94, 602, 604.

71. 18 U.S.C. § 924(e)(2)(B)(ii), *invalidated by Johnson*, 576 U.S. 591.

72. *Johnson*, 576 U.S. at 597–98 (cleaned up).

73. *Id.* at 596–97.

74. *See id.* at 596–98 (cleaned up).

statute here requires no judicial imagination and offers specific mitigating and aggravating factors to guide the judge's determination of "appropriateness" in each case.[75] Therefore, *Johnson* does not abrogate *Houston*, and our holding that Utah Code section 76-3-207 is constitutional stands.

C. We Do Not Reach Whether Imposing JLWOP on an Intellectually Disabled Juvenile Is Categorically Unconstitutional Under the Federal and Utah Constitutions

¶51 Mullins next claims that it was unconstitutional under both the federal and state constitutions to sentence him to JLWOP because two United States Supreme Court decisions,[76] when taken together, prohibit imposing JLWOP on intellectually disabled juveniles. Mullins did not mention his intellectual disability in his original motion, and he likewise failed to mention the main case on which he relies for this argument, *Atkins v. Virginia*.[77] Thus, the new rule applies to this claim.

¶52 The State argues that Mullins failed to show that his claim is based on "a rule established or ruling issued by" a binding court, as the new rule requires.[78] Instead,

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75. *See* Utah Code § 76-3-207(3)–(4) (2001).

76. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Graham v. Florida*, 560 U.S. 48 (2010).

77. 536 U.S. 304.

78. *See* Utah R. Crim. P. 22(e)(2) (2025).

Mullins "cobbl[ed] together two existing but unrelated rules."

¶53 The State has a point. Mullins presents two cases that independently established new rules. The Court in *Atkins* established that intellectually disabled individuals cannot be sentenced to capital punishment.[79] And the Court in *Graham v. Florida* established that juveniles who have not committed homicide cannot be sentenced to JLWOP.[80] In the latter case, the Court stated that JLWOP "share[s] some characteristics with death sentences that are shared by no other sentences."[81] But it does not support the claim that Mullins now makes: that all JLWOP sentences should be treated as capital punishment in all circumstances. So Mullins's claim would require us to determine whether JLWOP is equivalent to capital punishment. If we must decide that now, the rule is not already established. And subparagraph (e)(2) of the new rule requires that a challenge to an illegal sentence be based on "a rule established or ruling issued by" a binding court.[82]

¶54 Mullins also makes no attempt to show that his proposed rule is based on new, binding caselaw interpreting the Utah Constitution. So we do not reach his claim under the Utah Constitution either.

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79. 536 U.S. at 321.

80. 560 U.S. at 82.

81. *Id.* at 69.

82. UTAH R. CRIM. P. 22(e)(2) (2025).

D. We Do Not Reach Whether JLWOP Sentences Are Categorically Unconstitutional Under Article I, Section 9 of the Utah Constitution

¶55 Mullins's fifth claim also challenges the constitutionality of JLWOP generally, this time solely under article I, section 9 of the Utah Constitution. He argues that under today's national consensus, a sentence of JLWOP is cruel and unusual. But Mullins never referred to the Utah Constitution in his original motion; he referred only to United States Supreme Court cases. Because he brings his current claim under the Utah Constitution, the new rule applies.

¶56 Mullins's claim does not meet the requirements of the new rule, however, because it is not based on a "a rule established or ruling issued" by a binding appellate court.[83] We previously rejected an almost identical constitutional challenge to JLWOP in *Houston*.[84] Mullins argues that the national consensus has changed since we decided that case. But in doing so, he identifies no precedent from a controlling Utah court indicating that the national consensus has changed. His argument, then, is not premised on a rule or ruling issued by a controlling court. As such, we do not reach the merits of this claim.[85]

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83. *See id.*

84. 2015 UT 40, ¶¶ 64–68.

85. In the alternative, Mullins argues that the Utah Constitution requires a sentencing court to make an on-the-record finding of permanent incorrigibility—a procedural requirement rejected by the United States Supreme Court under the United States Constitution.

E. JLWOP Is Not Categorically Unconstitutional Under the Eighth Amendment to the United States Constitution

¶57 Mullins next asks us to overturn another aspect of our decision in *Houston* and hold that a sentence of JLWOP is, without exception, unconstitutional under the Eighth Amendment's prohibition of cruel and unusual punishment. Because this claim fails on its merits under either version of rule 22(e), we need not ask which rule applies nor whether the claim meets the requirements of that rule.

¶58 Courts assess claims of cruel and unusual punishment under the United States Constitution by looking to the "evolving standards of decency that mark the progress of a maturing society."[86] This standard requires us to consider whether a punishment is proportionate to a crime based on "a national consensus against the sentencing practice at issue" and an exercise of the court's "independent judgment."[87]

See Jones v. Mississippi, 593 U.S. 98, 101 (2021); *see also infra* ¶¶ 71–72. As with his claim that JLWOP is categorically forbidden by the Utah Constitution, Mullins asks us to declare a new rule, rather than rely on binding precedent from this court or the United States Supreme Court. We therefore may not reach the merits of his claim under the new rule. *See* UTAH R. CRIM. P. 22(e)(2) (2025).

86. *Graham*, 560 U.S. at 58 (cleaned up).

87. *Id*. at 61.

¶59 In *Houston*, we addressed this same argument and declined to hold that JLWOP was categorically unconstitutional.[88] We based our analysis on binding United States Supreme Court precedent and explained that although "juveniles represent a unique class warranting special considerations in sentencing[,] . . . the unique characteristics of youth are accounted for, both by Utah law and through federal constitutional protections."[89] We also noted that "a great majority of states . . . permit LWOP sentences for juveniles" and declined to "conclude that the 'national consensus' favors the prohibition of LWOP for juveniles convicted of homicide."[90]

¶60 Mullins argues that the national consensus on JLWOP has sufficiently evolved since *Houston* for us to revisit the matter, given the decrease from thirty-nine states allowing JLWOP to twenty-five plus the District of Columbia. But he provides little evidence of changes in actual sentencing practices, an essential factor in the national consensus analysis when the legislative data are inconclusive.[91]

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88. 2015 UT 40, ¶¶ 52–63.

89. *Id.* ¶ 60.

90. *Id.* ¶ 62 (noting that, as of 2010, thirty-nine states allowed LWOP sentences for juvenile offenders convicted of homicide).

91. *See Graham*, 560 U.S. at 61, 66 (stating that a court considers "indicia of society's standards, as expressed in legislative enactments and state practice" and basing its holding, in part, on the fact that "life without parole sentences for juveniles convicted of nonhomicide crimes [are] as rare [in practice] as other sentencing practices found to be cruel and unusual" (cleaned up)).

¶61 In our view, a decrease from thirty-nine states permitting JLWOP by statute to twenty-five, without any information on actual sentencing practices, is not so great an evolution as to overcome the United States Supreme Court's established precedent, which the Court endorsed as recently as 2021.[92] Although states are trending away from permitting JLWOP, we agree with the State that, taken alone, half of the states plus the District of Columbia banning JLWOP do not a national consensus make. Again, we decline to overturn *Houston*.

F. Mullins's Sentence Was Imposed in an Illegal Manner Under Rule 22(e)

¶62 Mullins's final claim is that a JLWOP sentence was unconstitutional under the Eighth Amendment as applied to his case. Mullins argues that under *Miller v. Alabama* and its progeny, as someone whose crimes reflected transient immaturity, he could not constitutionally be sentenced to JLWOP.[93] He further argues that the sentencing court "recognized that Mr. Mullins could still change"—a fact that should have precluded a JLWOP sentence under the standards set forth in *Miller* and subsequent cases.

¶63 Mullins adequately raised this claim in his original motion and argument to the district court, so we consider

92. *See Jones*, 593 U.S. 98.

93. *See* 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016); *Jones*, 593 U.S. 98.

it under the old rule.[94] Our reviewability requirement, however, bars part of his argument.[95] In particular, Mullins asserts that "the undisputed record establishes that [his] crime reflected the transient immaturity of his youth." He claims that the record shows a complete absence of moral guidance in his childhood home and that his parents affirmatively encouraged criminal behavior. While the record shows that his childhood was likely deeply traumatic, crime caused by a traumatic past is not the same as crime caused by youthful immaturity. And without further factual development, we cannot say whether Mullins's crime was actually the result of his youth. Under our precedents for the old rule, we cannot engage in such a fact-intensive inquiry and thus cannot address this aspect of Mullins's claim.[96]

¶64 We do consider, however, Mullins's argument that the judge improperly sentenced him to JLWOP even though he "recognized that Mr. Mullins could still change." Though this argument has factual underpinnings, it raises questions we can answer on the record before us.

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94. Mullins's motion cited *Miller*, arguing that a judge must "have the opportunity to consider mitigating circumstances before imposing" JLWOP, and the record did not indicate that "the court took into consideration the defendant's youth" or "the possibility of rehabilitation." *See Noor v. State*, 2019 UT 3, ¶ 51 n.64, 435 P.3d 221 ("[A] party acting pro se should be accorded every consideration that may be reasonably indulged because of his lack of technical knowledge of law and procedure." (cleaned up)).

95. *See Houston*, 2015 UT 40, ¶¶ 24–26; *supra* ¶¶ 24–27.

96. *See Houston*, 2015 UT 40, ¶¶ 18, 27; *supra* ¶¶ 24–27.

The parties do not dispute the contents of the transcripts of the sentencing hearing or the original 22(e) motion hearing, and a fresh look at the case by the district court would not shed any additional light on what the sentencing court considered or concluded when sentencing Mullins. Because we would not need to find any facts outside the record, nor would we need to rely on any disputed facts in the record to analyze this claim, we conclude that this aspect of Mullins's claim is within the scope of the old rule.

¶65 Mullins's claim turns on recent federal caselaw emphasizing the constitutional differences between adults and juveniles and declaring certain penalties disproportionate when applied to juveniles. The Eighth Amendment requires that punishment be proportionate "to both the offender and the offense."[97] Proportionality "requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question."[98] Under that framework, a sentencing court must account for a juvenile's "lessened culpability and greater capacity for change" as compared to that of an adult.[99] In *Miller v. Alabama*, the United States Supreme Court declared that mandatory JLWOP sentencing schemes are unconstitutional because they prohibit that accounting.[100]

97. *Miller*, 567 U.S. at 469; *see also* U.S. CONST. amend. VIII.

98. *Graham*, 560 U.S. at 67.

99. *Miller*, 567 U.S. at 465 (cleaned up).

100. *See id.* at 465, 475–77.

¶66 Drawing on *Roper v. Simmons* and *Graham v. Florida*, the Court in *Miller* emphasized that "children are different."[101] Youth both "lessen[s] a child's moral culpability and enhance[s] the prospect that, as the years go by and neurological development occurs, [the child's] deficiencies will be reformed."[102] The Court reasoned that the characteristics of youth render ordinary penological justifications less rational.[103] Because youth lessens an offender's culpability for their actions, however horrible, "the case for retribution is not as strong with a minor as with an adult."[104] Similarly, deterrence is less effective because children's "immaturity, recklessness, and impetuosity . . . make them less likely to consider potential punishment" in making decisions.[105] A lifetime sentence is generally justified by concluding that an offender will be a perpetual danger to others if released from prison—but such a conclusion requires finding the offender "incorrigible," and "incorrigibility is inconsistent with youth."[106] Finally, while the criminal justice system ordinarily aims to rehabilitate offenders, any LWOP

101. *Id.* at 480; *see also Roper v. Simmons*, 543 U.S. 551, 578 (2005) (declaring the death penalty for juvenile offenders unconstitutional); *Graham*, 560 U.S. at 82 (declaring JLWOP unconstitutional for non-homicide juvenile offenders).

102. *Miller,* 567 U.S. at 472 (cleaned up).

103. *Id.* at 472–73 (citing *Roper*, 543 U.S. 551; *Graham*, 560 U.S. 48).

104. *Id.* at 472 (cleaned up) (quoting *Graham*, 560 U.S. at 71).

105. *Id.*

106. *Id.* at 472–73 (cleaned up).

sentence "forswears altogether the rehabilitative ideal" and instead rests on "an irrevocable judgment about an offender's value and place in society."[107] That immutable judgment is "at odds with a child's capacity for change."[108] Because a JLWOP sentence could not serve these legitimate functions in an ordinary case, the sentence is disproportionate for most juvenile offenders.[109]

¶67 The Court in *Miller* did "not categorically bar a penalty for a class of offenders or type of crime," instead "mandat[ing] only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" JLWOP.[110] But the Court concluded by stating that given "children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."[111]

¶68 A few years later, in *State v. Houston*, this court held that the Utah sentencing scheme allowing a court to impose JLWOP was facially constitutional.[112] Relying on *Miller* and related federal precedents, the court determined that "the Eighth Amendment does not

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107. *Id.* at 473 (cleaned up).

108. *Id.*

109. *Id.* at 479–80.

110. *Id.* at 483.

111. *Id.* at 479.

112. 2015 UT 40, ¶¶ 52–53; *see also* UTAH CODE § 76-3-207 (2008).

prohibit the imposition of LWOP for a juvenile homicide offender."[113] And Utah's "statutory scheme enable[d] the kind of individualized sentencing determination that the Supreme Court has deemed necessary for serious offenses."[114] In sum, because the sentencing statute did not mandate a JLWOP sentence and instead granted discretion to the sentencer to impose a lesser sentence, it did not, on its face, violate the Eighth Amendment.[115]

¶69 A year later, in *Montgomery v. Louisiana*, the United States Supreme Court held that *Miller* applies retroactively to juveniles who were sentenced to JLWOP before the Court decided *Miller*.[116] To find the rule retroactive, the Court concluded that *Miller* announced a substantive constitutional rule, as opposed to a procedural one.[117] The Court recognized that *Miller* had a procedural component, requiring a discretionary sentencing scheme that allows a sentencer to consider youth as a factor before imposing a JLWOP sentence.[118] But "[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the *manner* of determining a defendant's sentence."[119] And

113. *Houston*, 2015 UT 40, ¶ 55.

114. *Id.* ¶ 61.

115. *Id.* ¶¶ 61–63.

116. 577 U.S. at 206–12.

117. *Id.* at 209.

118. *Id.* at 209–10.

119. *Id.* at 206 (emphasis added).

"mandatory life-without-parole sentences for children pose too great a risk of disproportionate punishment."[120]

¶70 The Court clarified that *Miller* went further than simply requiring a sentencing court to weigh a defendant's youth.[121] *Miller* "established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'"[122] Thus, "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'"[123] Because *Miller* barred JLWOP for all but the rarest offenders, it "rendered life without parole an unconstitutional penalty for . . . juvenile offenders whose crimes reflect the transient immaturity of youth"—a substantive, and thus retroactive, constitutional protection.[124]

¶71 The Supreme Court next heard a JLWOP case in *Jones v. Mississippi*.[125] *Jones* considered whether *Miller*

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120. *Id.* at 208 (cleaned up).

121. *Id.*

122. *Id.* (quoting *Miller*, 567 U.S. at 472).

123. *Id.* (quoting *Miller*, 567 U.S. at 479).

124. *Id.* at 208–09 ("Like other substantive rules, *Miller* is retroactive because it necessarily carries a significant risk that a defendant—here, the vast majority of juvenile offenders—faces a punishment that the law cannot impose upon him." (cleaned up)).

125. 593 U.S. 98.

required a sentencer to "make a separate factual finding that the defendant is permanently incorrigible" or to otherwise include an implicit finding of incorrigibility on the record.[126] The Court clarified that a sentencing court must consider "youth as a sentencing factor akin to a mitigating circumstance" under the Court's death penalty jurisprudence.[127] Relying on language from *Montgomery* declaring that a sentencer need not make an express factual finding of incorrigibility, the Court rejected Jones's effort to overturn his JLWOP sentence.[128]

¶72 In its language, the Court in *Jones* seemed to step back from the broadest reading of both *Miller* and *Montgomery*, stating that under those cases "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient."[129] But the Court also expressly declined to overrule *Miller* or *Montgomery*,[130] instead framing the question it resolved as merely whether to adopt "an *additional* constitutional requirement that the sentencer must make a finding of permanent incorrigibility before sentencing a murderer

126. *Id.* at 101.

127. *Id.* at 108.

128. *Id.* at 101.

129. *Id.* at 105.

130. *Id.* at 118 ("Today's decision does not overrule *Miller* or *Montgomery*."); *see also id.* at 144 (Sotomayor, J., dissenting) ("[S]entencers should hold this Court to its word: *Miller* and *Montgomery* are still good law.").

under 18 to life without parole."[131] The Court repeatedly reiterated that clear language in *Miller* and *Montgomery* dictated its answer to that question: that no such finding was required.[132] And the Court quoted in a footnote a "key paragraph" from *Montgomery*, stating that the absence of "a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole."[133] So while we read *Jones* to establish that a sentencing court need not consider youth in any *particular* way, *Jones* does not excuse sentencing courts of the obligation to properly consider youth before imposing a JLWOP sentence.

¶73 Having reviewed the relevant precedents, we turn now to Mullins's principal argument. He asserts that his JLWOP sentence was unconstitutional because the sentencing court in his case affirmatively "recognized that [he] could still change" but then sentenced him to JLWOP. Though this court and the United States Supreme Court have both recognized that JLWOP is constitutionally permissible in some cases, neither court has declared that it is permissible in all cases, nor considered the specific claim Mullins raises here.[134]

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131. *Id.* at 119 (majority opinion) (emphasis added).

132. *Id.* at 109–10, 113, 119.

133. *Id.* at 106 n.2 (quoting *Montgomery*, 577 U.S. at 211).

134. *See id.* at 115; *Miller*, 567 U.S. at 483; *Houston*, 2015 UT 40, ¶ 55. In fact, the United States Supreme Court in *Jones* expressly declined to explore whether a sentencer who refused to consider a defendant's youth would violate that youth's Eighth Amendment

¶74 We agree with Mullins that if a sentencing court affirmatively finds that a juvenile offender can change, a JLWOP sentence is unconstitutional. "[T]he characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate."[135] And under *Miller* and its progeny, if a child is capable of change and reform—that is, is not incorrigible—a JLWOP sentence *is* disproportionate and unconstitutional.[136] A sentencing court has no obligation to make an on-the-record finding of permanent incorrigibility before imposing a JLWOP sentence.[137] But a contrary finding bars the court from imposing JLWOP.[138]

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right. 593 U.S. at 115 n.7; *see also id.* at 120 (declining to consider "any as-applied Eighth Amendment claim of disproportionality"); *id.* at 144 n.6 (Sotomayor, J., dissenting) (noting that a juvenile as-applied claim "should be controlled by this Court's holding that sentencing a child whose crime reflects transient immaturity to life without parole is disproportionate under the Eighth Amendment" (cleaned up)).

135. *Miller*, 567 U.S. at 473.

136. *Montgomery*, 577 U.S. at 211.

137. *See Jones*, 593 U.S. at 113.

138. *See Montgomery*, 577 U.S. at 211; *Jones*, 593 U.S. at 119 (expressly declining to overrule *Montgomery*). Our sister courts are divided over the proper interpretation of these difficult cases. *Compare, e.g.*, *State v. Kelliher*, 873 S.E.2d 366, 380 (N.C. 2022) ("[C]onsistent with *Miller*, *Montgomery*, and *Jones*, we conclude that the Eighth Amendment categorically prohibits a sentencing court from sentencing any juvenile to life without parole if the sentencing court has found the juvenile to be neither incorrigible nor irredeemable."

¶75 We now turn to the facts of Mullins's case. At sentencing, Mullins's counsel emphasized that he was asking the court to "simply allow the Board of Pardons . . . some discretion at some time in the very distant future to be able to make a decision about whether or not parole is even a possibility for Mr. Mullins." Counsel highlighted that Mullins "never had a chance at a normal life" due to his "profoundly dysfunctional upbringing." And counsel argued that because Mullins came from a "dysfunctional horrific environment," removing him from that environment would create a meaningful opportunity for him to learn and change.

¶76 Following counsel's arguments and admission of a psychological report, the sentencing judge stated, "If you're trying to assess the level of hope for the future you hold out for Mr. Mullins, I don't see anything in [the psychological] report on how to assess hope for change." In response, counsel declared, "I don't want to say that hope for change is irrelevant, but it almost doesn't matter

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(cleaned up)), *and Malvo v. State*, 281 A.3d 758, 765 (Md. 2022) (addressing "a situation in which a sentencing court finds that a crime was the result of the offender's transient immaturity but nonetheless sentences the offender to life without parole" and concluding that "an offender deemed corrigible cannot constitutionally be sentenced to" JLWOP), *with People v. Wilson*, 220 N.E.3d 1068, 1077 (Ill. 2023) ("[N]o viable *Miller* claim exists, so long as the [JLWOP] sentence is not mandatory " (cleaned up)), *and Commonwealth v. Felder*, 269 A.3d 1232, 1243 (Pa. 2022) (same). It is clear from these cases that reasonable jurists—including our dissenting colleagues here—may disagree with our reading. Still, we believe this reading is the most appropriate application of Eighth Amendment principles and federal caselaw.

what we hope"—instead putting sole responsibility for evaluating Mullins's ability to change on the Board of Pardons and Parole. Counsel further stated that "[w]e cannot predict what Mr. Mullins himself will do by way of coming to a realiz[ation] inside himself to change." The judge then imposed a JLWOP sentence, stating that "when I balance . . . the family's requests and Mr. Mullins'[s] request and the need to send a message," JLWOP was appropriate. Wrapping up the hearing, the judge opined, "I sincerely hope it's the right judgment, Mr. Mullins, and if you're gonna be with us for a long time and have a chance to change, I hope—not under the present circumstances—I'm hoping that you'll find some way to be productive."

¶77 Mullins argues that the judge's comments show that "the judge was not convinced beyond a reasonable doubt that Mr. Mullins could never change." On that basis, he requests that his sentence be modified to make him eligible for parole.

¶78 We cannot say that we agree. The record does not show an affirmative factual finding that Mullins was capable of change—the showing necessary for us to declare Mullins's sentence unconstitutional as a matter of law and immediately modify his sentence to permit the possibility of parole.

¶79 Even still, the sentencing court's comments and the context in which they were delivered raise significant ambiguity as to whether a JLWOP sentence was "imposed

in an illegal manner" here.[139] We agree with Mullins that the court here both contemplated his ability to change—one of the important features of youth—and may have implicitly concluded that Mullins had a capacity to change. After the judge's statement that he did not know how to judge capacity for change, and counsel's arguments that the issue was better left to the Board of Pardons and Parole, and hardly relevant for the sentencing judge, the judge did not conclude the hearing. Rather, in the context of considering whether to leave discretion to the Board of Pardons and Parole, the judge made his comment suggesting some "hope" that Mullins might have a "chance to change." The judge then affirmatively sentenced Mullins to JLWOP—a sentence incompatible with a suggestion that Mullins could change.

¶80 While we cannot say that Mullins is the type of juvenile offender for whom JLWOP is categorically disproportionate—the sentencing court did not make that finding, and this court cannot evaluate that question in the first instance—the court's comments raise significant concerns that Mullins may fall into that category. The court's comments also raise significant concerns that it misapprehended its constitutional obligation to consider youth in the proper manner under the retroactive reach of *Miller* and its progeny. Indeed, the comments appear to contemplate leaving the full consideration of Mullins's youth to the Board of Pardons and Parole, making it unclear whether the court was appropriately assessing Mullins's youth in its decision to impose a JLWOP sentence.

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139. *See* UTAH R. CRIM. P. 22(e) (2013).

¶81 Given that "a lifetime in prison is a disproportionate sentence for all but the *rarest* of children,"[140] the court's statements undermine our confidence that JLWOP was an appropriate and constitutional sentence and that the court properly undertook the constitutional task before it—to consider Mullins's "youth and attendant characteristics" themselves.[141] Accordingly, the court's comments lead us to conclude that Mullins's sentence "pose[s] too great a risk of disproportionate punishment" here.[142] We therefore hold that Mullins's sentence was "imposed in an illegal manner" under the old rule 22(e).

¶82 The fact that Mullins was sentenced before *Miller* and its progeny were issued strengthens our conclusion because the sentencing court lacked notice of the constitutional import of Mullins's youth.[143] When the court sentenced Mullins in 2002, controlling caselaw did not indicate that juveniles should receive special consideration when being sentenced. Indeed, sentencing

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140. *Montgomery*, 577 U.S. at 195 (emphasis added).

141. *Miller*, 567 U.S. at 483.

142. *Montgomery*, 577 U.S. at 208 (cleaned up).

143. *See, e.g.*, *State v. Null*, 836 N.W.2d 41, 76 (Iowa 2013) (similarly noting that the district court lacked "the benefit of *Miller*" during sentencing, and providing an opportunity to reconsider the appropriate sentence for a juvenile upon remand); *Malvo*, 281 A.3d at 772 (vacating a JLWOP sentence when a judge's ambiguous comments suggested he had not weighed the defendant's youth and ability to change, emphasizing that defendant was sentenced before *Miller* and that the court need not "presume that a sentencing judge is clairvoyant").

a juvenile to death—a more severe punishment than JLWOP—was still constitutionally permissible.[144] And the United States Supreme Court had rejected the argument that juveniles were different from adults because they have "less developed cognitive skills," are "less mature and responsible," and are "less morally blameworthy."[145] Additionally, the Court stated that juvenile transfer statutes[146] adequately "ensure individualized consideration of the maturity and moral responsibility" of a juvenile "before they are even held to stand trial as adults."[147] In other words, the Court allowed for the possibility that a juvenile's individual maturity and responsibility need not be considered at all during sentencing. If even the death penalty for juveniles served legitimate penological goals under controlling caselaw, and constitutional law did not yet mandate individualized consideration of youth at sentencing, then there is no basis to assume that a sentencing court at that time would have understood the constitutional rights implicated by sentencing a youth to JLWOP.

¶83 In contrast, *Miller* and *Montgomery* marked a turning point, together making clear that a JLWOP

144. *See Stanford v. Kentucky*, 492 U.S. 361, 380 (1989), *overruled by Roper*, 543 U.S. 551.

145. *Stanford*, 492 U.S. at 377–79.

146. Transfer statutes "allow[] or mandate[] the trial of a juvenile as an adult in a criminal court for a criminal act." *Transfer Statute*, Black's Law Dictionary (12th ed. 2024).

147. *Stanford*, 492 U.S. at 375.

sentence is disproportionate for juvenile defendants who possess the capacity to change.[148] Under *Miller*, a sentencing court must consider a juvenile's youth and its attendant characteristics.[149] "[I]mposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[150] The sentencing court must have the opportunity to consider the "mitigating qualities of youth," such as "immaturity, impetuosity, and failure to appreciate risks and consequences" as well as the peer pressures and the familial environment that surround the juvenile.[151] The fact that the sentencing court did not have the benefit of this caselaw, combined with its ambiguous remarks about Mullins's prospects for change in the context of considering whether to allow the Board of Pardons and Parole to make that determination, suggests "too great a risk of disproportionate punishment" here.[152] It is "unclear at best whether [Mullins's] sentencing proceeding complied with the Eighth Amendment."[153] Viewed as a whole, the sentencing record raises significant

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148. *Miller*, 567 U.S. at 479–80; *Montgomery*, 577 U.S. at 209–10 (recognizing *Miller*'s "substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity").

149. *See* 567 U.S. at 465, 470–80.

150. *Id.* at 474.

151. *Id.* at 476–77 (cleaned up).

152. *See id.* at 479.

153. *See Malvo*, 281 A.3d at 773 ("In our view, the legality of a sentence under the Eighth Amendment is not a topic for this Court's speculation.").

concerns about the constitutionality of Mullins's sentence and the sentencing court's apprehension of the constitutional task before it. Accordingly, we hold that Mullins's sentence was imposed in an illegal manner under the old rule 22(e). We therefore vacate Mullins's sentence and remand for resentencing proceedings consistent with *Miller* and its progeny.[154]

¶84 We turn then to the question of remedy. Mullins requests that this court "correct [his] sentence by giving him the chance to seek parole." And, indeed, the United States Supreme Court has suggested that simply enabling a defendant to seek parole may be an appropriate path under *Miller*.[155] We therefore do not fault Mullins for seeking that remedy. But the Court left to the states to determine whether resentencing or mere parole eligibility is appropriate when a juvenile's sentencing process violated the Eighth Amendment.[156] As we have noted, in instances where the record reflects an affirmative finding that a juvenile is capable of change—in other words, not permanently incorrigible—or that the crime was the result of transient immaturity, JLWOP is unconstitutionally disproportionate. In such cases, a resentencing proceeding in which the sentencing court could again impose JLWOP would be inappropriate.

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154. *See Miller*, 567 U.S. at 474, 479, 489; *Jones*, 593 U.S. at 111–12 (noting that appropriate sentencing proceedings under *Miller* "help[] ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age").

155. *See Montgomery*, 577 U.S. at 212.

156. *See id.*

¶85 Here, however, the record does not reflect such an unambiguous finding. Accordingly, we can only speculate as to whether Mullins is one of the rare individuals "whose crimes reflect irreparable corruption."[157] But the court's comments at Mullins's sentencing raise a significant risk that Mullins may be one of those individuals and that the court did not properly consider that possibility. We therefore leave it to the sentencing court on remand to determine the appropriate sentence here, considering Mullins's youth as required by the Eighth Amendment, consistent with *Miller* and this opinion.[158]

CONCLUSION

¶86 Mullins brings seven claims in his challenge to his sentence. We either reject or do not reach six of his seven claims. As to his final claim, Mullins argues that although the court considered his youth and suggested he could change, the court nevertheless sentenced him to JLWOP, which was disproportionate under the Eighth Amendment. We hold that the sentencing court's ambiguous comments on the record about Mullins's capacity for change renders Mullins's JLWOP sentence one imposed in an illegal manner under rule 22(e). Although the sentencing court appeared to consider Mullins's youth, it did so in the context of considering whether to leave the Board of Pardons and Parole the discretion to assess Mullins's ability to change and without understanding youth's full constitutional import, as set forth in *Miller* and its

157. *Id.* at 209.

158. *See generally Miller*, 567 U.S. 460.

progeny. This, taken together with the court's suggestion that Mullins might have the capacity for change, raises significant concerns about the constitutionality of Mullins's sentence, leading us to conclude that the sentence was imposed in an illegal manner. Accordingly, we vacate Mullins's sentence and remand to the district court for resentencing proceedings consistent with this opinion.

JUSTICE HAGEN, concurring in part and dissenting in part from the Opinion of the Court:

¶87 We join the opinion of the court, except as to the majority's holding in Part II.F that Mullins's sentence violates the Eighth Amendment. The majority concludes that *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny hold that "if a child is capable of change and reform, that is, is not incorrigible, a JLWOP sentence *is* disproportionate and unconstitutional." *Supra* ¶ 74. Based on that interpretation of the governing law, the majority reasons that "if a sentencing court affirmatively finds that a juvenile offender can change, a JLWOP sentence is unconstitutional." *Supra* ¶ 74. Although the sentencing court did not make such a finding here, the majority concludes that the court's statement about Mullins's "chance to change" creates "significant ambiguity as to whether a JLWOP sentence was 'imposed in an illegal manner'" under rule 22(e) and requires resentencing. *Supra* ¶ 79.

¶88 We disagree with the premise of the majority's holding. In our reading, *Miller* and its progeny stand for the narrower proposition that, to comply with the Eighth Amendment, a sentencing judge must have discretion to impose a non-JLWOP sentence based on an individualized assessment of the unique circumstances presented in the case. Although the United States Supreme Court has sent mixed messages about when a juvenile can be sentenced to JLWOP without violating the Eighth Amendment, its most recent pronouncement on this issue was perfectly clear: "In a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Jones v. Mississippi*, 593 U.S. 98, 105 (2021).

¶89 When Mullins was sentenced, the district court had discretion to impose a lesser sentence. And, in making that determination, the court was free to consider all mitigating factors, including Mullins's youth and attendant circumstances. That is all the *Miller* line of cases requires.

¶90 Beginning in 2005, the Court decided a series of cases that recognized that "youth matters in sentencing." *See id.* First, in *Roper v. Simmons*, the Court held that sentencing a juvenile offender to death violated the Eighth Amendment. 543 U.S. 551, 578 (2005). Five years later, in *Graham v. Florida*, the Court held that a JLWOP sentence for crimes other than homicide also violated the Eighth Amendment. 560 U.S. 48, 82 (2010). These cases "establish[ed] that children are constitutionally different from adults for purposes of sentencing" due to their

"diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at 471.

¶91 In *Miller*, the Court confronted the question of whether imposing mandatory JLWOP on juvenile homicide offenders violated the Eighth Amendment. *See id.* at 465. The Court looked to two lines of cases—the *Roper* and *Graham* cases categorically banning certain punishments for classes of juvenile offenders, and its adult death penalty cases "requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death." *Id.* at 470. The Court concluded that "*Graham*, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 489. Because JLWOP is the harshest penalty available for juvenile homicide offenders, the Court held that sentencing schemes that require mandatory JLWOP violate the Eighth Amendment because they "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 476.

¶92 A few years later, the Court was tasked with deciding whether the rule it announced in *Miller* was retroactive. *See Montgomery v. Louisiana*, 577 U.S. 190 (2016). Under the Court's precedent, "a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced." *Id.* at 198. But "new substantive rules of constitutional law" are retroactive. *Id.* So the question was

whether *Miller* announced a procedural rule requiring individualized sentencing before imposing a JLWOP sentence or a substantive rule prohibiting JLWOP for a particular class of juveniles. *See id.* at 206–12.

¶93 A discerning reader of the *Miller* decision would have assumed that it announced a procedural rule. After all, *Miller* said as much: "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Miller*, 567 U.S. at 483.

¶94 Yet the *Montgomery* court asserted that "*Miller* . . . did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole." *Montgomery*, 577 U.S. at 208. Over a sharp dissent that accused the majority of rewriting *Miller*, *see generally id.* at 224 (Scalia, J., dissenting), the Court held that *Miller* announced a substantive rule:

> Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity. Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, it rendered life without

> parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.

Id. at 208 (majority opinion) (cleaned up). The Court acknowledged that *Miller* did not require a sentencing court to make a factual finding of incorrigibility, but it explained that the lack of "a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.* at 211.

¶95 If *Montgomery* had been the Supreme Court's last word on the subject, we would readily agree with the majority that JLWOP is categorically disproportionate in violation of the Eighth Amendment for juveniles whose crimes reflect the transient immaturity of youth rather than permanent incorrigibility. But the Supreme Court has since retreated from *Montgomery*'s interpretation of *Miller*. It is at this point that our interpretation of the governing caselaw diverges from that of the majority.

¶96 In *Jones v. Mississippi*, the Court was squarely confronted with the question of whether, before imposing a JLWOP sentence, a sentencer must make an express factual finding of permanent incorrigibility or "must at least provide an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility." 593 U.S. at 113 (cleaned up). The Court held that no express

or implicit finding of permanent incorrigibility is needed before imposing JLWOP because *Miller* requires only a "discretionary sentencing procedure" to comport with the Eighth Amendment. *Id.* at 110. The Court explained that "*Miller* declined to characterize permanent incorrigibility as . . . an eligibility criterion," and instead treated "youth as a sentencing factor akin to a mitigating circumstance." *Id.* at 108. Just as "th[e] Court has required for the individualized consideration of mitigating circumstances in capital cases," *id.*, *Miller* requires individualized sentencing because mandatory JLWOP "poses too great a risk of disproportionate punishment," *id.* at 110 (cleaned up). But like the consideration of mitigating factors in capital cases, the Eighth Amendment does not require that the sentencer weigh the mitigating circumstances in any particular way or make "an implicit finding regarding those mitigating circumstances." *Id.* at 116.

¶97 The Court concluded that Jones's JLWOP sentence complied with *Miller* "because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of Jones's youth." *Id.* at 120. The trial judge was not required to find—even implicitly—that the crime was a result of permanent incorrigibility as opposed to the transient immaturity of youth. *Id.* at 118.

¶98 Both the concurrence and the dissent criticized the majority's opinion as irreconcilable with *Montgomery*. *See id.* at 121–29 (Thomas, J., concurring); *id.* at 129–51 (Sotomayor, J., dissenting). The majority acknowledged the tension between "the procedural function of *Miller*'s rule" and *Montgomery*'s holding "that the *Miller* rule

was substantive for retroactivity purposes," *id.* at 110 (majority opinion), but it insisted that it was not overruling *Montgomery* because *Montgomery*'s holding—that *Miller* applies retroactively on collateral review—remains intact, *id.* at 118. And, the majority pointed out, *Montgomery* had "unequivocally stated that '*Miller* did not impose a formal factfinding requirement' and added that 'a finding of fact regarding a child's incorrigibility . . . is not required.'" *Id.* at 104–05 (quoting *Montgomery*, 577 U.S. at 211).

¶99 As for *Montgomery*'s assertion that *Miller* barred JLWOP "for all but the rarest of juvenile offenders . . . whose crimes reflect permanent incorrigibility," *Montgomery*, 577 U.S. at 209, the *Jones* majority characterized *Miller* as merely acknowledging "that a discretionary sentencing procedure would help make life-without-parole sentences relatively rare," as borne out by statistics from those states with discretionary JLWOP, *Jones*, 593 U.S. at 112. According to the majority, *Miller* required only that "a sentencer must have discretion to consider youth before imposing a [JLWOP] sentence," and "*Montgomery* did not purport to add to *Miller*'s requirements." *Id.* at 109.

¶100 Despite the Court's insistence that *Jones* did not overrule *Montgomery*, the two cases are difficult to reconcile. While *Montgomery* read *Miller* as imposing a substantive rule that rendered JLWOP unconstitutional for all but the rare juvenile offender "whose crimes reflect irreparable corruption," *Montgomery*, 577 U.S. at 209, *Jones* held that *Miller* "mandated only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a [JLWOP] sentence," *Jones,* 593 U.S. at 101 (cleaned up).

¶101 As we see it, the substantive rule recognized in *Montgomery* did not survive *Jones*'s subsequent holding that permanent incorrigibility is not "an eligibility criterion" for JLWOP and that "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Jones*, 593 U.S. at 105, 107–09. And we are bound to follow the Supreme Court's most recent pronouncement in *Jones*. *Cf. In re Adoption of J.S.*, 2014 UT 51, ¶ 49, 358 P.3d 1009 (explaining that where "two lines of cases are unquestionably incompatible . . . our most recent pronouncement is the law, and has overtaken any prior contrary statement").

¶102 Although *Jones* expressly declined to overrule the holdings in *Miller* and *Montgomery*, it described those untouched holdings narrowly: "*Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18. Today's decision does not disturb that holding. *Montgomery* later held that *Miller* applies retroactively on collateral review. Today's decision likewise does not disturb that holding." *Jones*, 593 U.S. at 118. So when *Jones* says it is not overruling the holding in *Montgomery*, we read that as leaving intact *Montgomery*'s ultimate holding that *Miller* is retroactive—that is, a defendant sentenced to mandatory JLWOP prior to *Miller* is entitled to resentencing under a discretionary sentencing scheme—not its assertion that it is unconstitutional to impose a JLWOP sentence on a juvenile who is not permanently incorrigible.[159]

159. To be sure, *Jones* creates confusion by quoting a "key paragraph" from *Montgomery*, stating that the absence of "a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without

¶103 This interpretation of *Jones* is where we part ways with the majority. The majority recognizes that, under *Jones*, "[a] sentencing court has no obligation to make an on-the-record finding of permanent incorrigibility before imposing a JLWOP sentence," but holds that "a contrary finding bars the court from imposing JLWOP." *Supra* ¶ 74.

¶104 The majority's reasoning assumes that a JLWOP sentence is constitutional only if the juvenile is, in fact, permanently incorrigible. In other words, it assumes that the sentencing judge is required to find permanent incorrigibility and *Jones* merely holds that the court has no duty to make that finding on the record. But we do not read *Jones* so narrowly.

¶105 In our view, *Jones* does not merely hold that no express factual finding or on-the-record explanation is required; it holds that no finding of permanent incorrigibility is required at all. *Jones* squarely rejects the idea that permanent incorrigibility in JLWOP cases is "an eligibility criterion akin to sanity or a lack of intellectual disability" in death penalty cases. 593 U.S. at 107. Instead, it explains that the defendant's youth is a "mitigating factor" that can be weighed differently by different judges "given the mix of all the facts and circumstances in a specific case." *Id.* at 109, 115. Not only

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parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Jones v. Mississippi*, 593 U.S. 98, 106 n.2 (2021) (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 211 (2016)). But the quoted language cannot be squared with the express holding in *Jones* that permanent incorrigibility is not "an eligibility criterion." *Id.* at 107–08.

does it reject a formal factfinding requirement, *id.* at 106, but it also rejects the idea that permanent incorrigibility is "a factual prerequisite" to imposing a JLWOP sentence, *id.* at 109 n.3 ("If permanent incorrigibility were a factual prerequisite to a life-without-parole sentence, this Court's Sixth Amendment precedents might require that a jury, not a judge, make such a finding.").

¶106 We cannot square the majority's holding in this case with *Jones*'s clear pronouncement that permanent incorrigibility is not an eligibility criterion for JLWOP. The rule that the majority adopts—that JLWOP is not permitted where the sentencing court has found the juvenile redeemable—is merely the flip side of the rule *Jones* expressly rejects—that JLWOP sentences are permitted only where a court has found the juvenile irredeemable. If permanent incorrigibility is not an eligibility criterion or factual prerequisite, there is no reason why a contrary finding would preclude a JLWOP sentence.

¶107 We acknowledge that the majority's holding finds support in decisions from two other state supreme courts, but we likewise disagree with the way those decisions treat permanent incorrigibility as an eligibility criterion in the wake of *Jones*. Those cases similarly vacated JLWOP sentences where the record suggested that the sentencing court did not believe the defendant to be permanently incorrigible. Specifically, the North Carolina Supreme Court vacated a JLWOP sentence where the sentencing court made an express finding that the juvenile was "neither incorrigible nor irredeemable."

State v. Kelliher, 873 S.E.2d 366, 380 (N.C. 2022) (cleaned up). And Maryland's high court vacated a JLWOP sentence where it was unclear whether the sentencing judge viewed the defendant as "the rare juvenile offender whose crime reflects irreparable corruption." *Malvo v. State*, 281 A.3d 758, 772 (Md. 2022) (cleaned up). [160]

¶108 Both opinions were 4–3 decisions in which the courts split over the proper interpretation of the Supreme Court's JLWOP caselaw. The majority opinions read those cases to mean that the Eighth Amendment categorically prohibits imposing a JLWOP sentence on a juvenile who is not incorrigible. *See Kelliher*, 873 S.E.2d at 380; *Malvo*, 281 A.3d at 765. But the dissenting opinions pointed out that "the most recent iteration of that line of cases, [the *Jones* opinion], unequivocally holds that *all* that is procedurally required prior to [imposing a JLWOP sentence] is an individualized sentencing proceeding in which the court has discretion to sentence the offender to less than life without the possibility of parole." *Malvo*, 281 A.3d at 806 (Hotten, J., dissenting); *see also Kelliher*, 873 S.E.2d at 401 (Newby, C.J., dissenting) (explaining that, under *Jones*, "a sentence is constitutionally permissible so long as the trial court is permitted to consider the juvenile defendant's age and attendant characteristics"). Under the

160. When *Malvo v. State* was decided on August 6, 2022, the state's highest court was called the Court of Appeals of Maryland. *See Malvo v. State*, 281 A.3d 758 (Md. 2022); *see also* Md. Const. art. IV, pt. I, § 1 (1867). Effective December 14, 2022, the court was renamed the Maryland Supreme Court. *See* Md. Const. art. IV, pt. I, § 1; *see also* S.B. 666, 2021 Gen. Assemb., Reg. Sess. (Md. 2021); H.B. 885, 2021 Gen. Assemb., Reg. Sess. (Md. 2021).

dissenting justices' reading of *Jones*, whether JLWOP "is constitutionally sufficient under the Eighth Amendment depends upon the presence [of a] discretionary sentencing procedure. It is decisively *not*, as the majority holds, whether the sentencing court, at least implicitly, found the juvenile to be incorrigible." *Malvo*, 281 A.3d at 809 (Hotten, J., dissenting) (cleaned up); *see also Kelliher*, 873 S.E.2d at 401 (Newby, C.J., dissenting) (asserting that "a trial court need not determine that a juvenile defendant is incorrigible or irredeemable before using its discretion to sentence the defendant to life imprisonment without the possibility of parole").

¶109 "Other courts have understood *Jones* similarly and have concluded that no viable *Miller* claim exists, so long as the sentence is not mandatory—that is so long as the sentencer has discretion to consider the mitigating qualities of youth and impose a lesser punishment." *People v. Wilson*, 220 N.E.3d 1068, 1077 (Ill. 2023) (cleaned up) (citing cases); *see also Fletcher v. State*, 532 P.3d 286, 305 (Alaska Ct. App. 2023) (holding that *Jones* forecloses any federal constitutional claim under *Miller* so long as the defendant was sentenced under a discretionary sentencing scheme). Those courts agree that "under the current state of Eighth Amendment law as expressed by *Jones*, 'a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient.'" *Commonwealth v. Felder*, 269 A.3d 1232, 1243 (Pa. 2022) (quoting *Jones*, 593 U.S. at 105).

¶110 Indeed, some courts that had interpreted *Miller* and *Montgomery* to restrict JLWOP sentences

to permanently incorrigible youth have now overruled those opinions in light of *Jones*. For example, the Illinois Supreme Court overruled its prior holding "that a juvenile offender's discretionary life sentence does not comport with the [E]ighth [A]mendment unless the sentencing court first makes a finding of permanent incorrigibility" because that holding "is *directly* at odds with the holding in *Jones*—specifically, that additional findings are not required, in that a discretionary sentencing scheme that allows a court to consider youth and its attendant characteristics is constitutionally sufficient." *Wilson*, 220 N.E.3d at, 1076–77 (cleaned up) (overruling *People v. Holman*, 91 N.E.3d 849 (Ill. 2017)). The Supreme Court of Pennsylvania also overruled its prior decision that had interpreted *Montgomery* to "permit the imposition of a life-without-parole sentence upon a juvenile offender only if the crime committed is indicative of the offender's permanent incorrigibility" because that understanding "has been abrogated by the High Court's decision in *Jones*." *Felder*, 269 A.3d at 1243 (cleaned up) (overruling *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017)).

¶111 We read *Jones* similarly. Because permanent incorrigibility is not an eligibility criterion, a JLWOP sentence is not categorically unconstitutional when imposed on a juvenile who the court views as redeemable. *Jones* also disavowed the notion that a sentencer must weigh a juvenile's youth and attendant characteristics in any particular way. *Jones*, 593 U.S. at 115. Instead, all that the Eighth Amendment requires is that the sentencer have discretion to consider youth as a mitigating factor. *Id.*

¶112 In this case, Mullins received the individualized sentencing that the Eighth Amendment requires. *See State v. Houston*, 2015 UT 40, ¶ 61, 353 P.3d 55 (concluding that Utah's discretionary JLWOP sentencing scheme comported with *Miller*). The sentencing court had discretion to impose a lesser sentence if it determined that a JLWOP sentence was not appropriate. *See* UTAH CODE § 76-3-207(4)(c)–(d) (2001). Among other things, the court could consider evidence regarding "the defendant's character, background, history, mental and physical condition" and "any other facts in aggravation or mitigation of the penalty that the court consider[ed] relevant to the sentence." *Id.* § 76-3-207(2)(a)(ii), (iv) (2001). In particular, the governing statute's non-exclusive list of mitigating circumstances included "the youth of the defendant at the time of the crime." *Id.* § 76-3-207(3)(e) (2001).

¶113 There is no need for us to decipher the sentencing court's remark about "a chance to change." Even if the sentencing court believed that Mullins had the capacity to change, it would not render Mullins's sentence unconstitutional. The sentencing court had discretion to impose a lesser sentence based on an individualized assessment of all relevant circumstances, including Mullins's youth. Mullins's capacity to change was simply one mitigating factor that the court had discretion to weigh, along with all other factors, in determining whether JLWOP was appropriate. Because the Supreme Court has held that "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient," *Jones*, 593 U.S. at 105, Mullins's sentence was not imposed in an illegal manner. We would therefore affirm his sentence.

APPENDIX B — SENTENCING HEARING TRANSCRIPT, MAY 1, 2002

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR SEVIER COUNTY, STATE OF UTAH

CASE NO. 011600140 FS

STATE OF UTAH,

Plaintiff,

VS.

MORRIS T. MULLINS,

Defendant.

BEFORE THE HONORABLE DAVID L. MOWER
SIXTH JUDICIAL DISTRICT COURT UTAH
STATE COURTS COMPLEX

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MAY 1, 2002

REPORTED BY: Joseph M. Liddell, CSR, RPR

SENTENCING

Filed March 29, 2004

[INDEX INTENTIONALLY OMITTED]

Appendix B

[4]**TRANSCRIPT OF PROCEEDINGS**

THE COURT: Thank you all and good morning, ladies and gentlemen. It's May the 1st, 2002. It's just after 9:00 a.m. I see Mr. Brown here with Mr. Evans. Mr. Moffatt and Mr. Bradshaw, Mr. Mullins, and Mr. Hummel.

Mr. Moffatt, I think today's the day for sentencing in this case. Any reason not to have the sentencing hearing today?

MR. MOFFATT: Judge, we know of no reason. We have submitted to the Court both, Mr. Brown and I assume, the stipulation, certain documents for your review. We have submitted to you, ah, in total, ah, a report with vitae authorized by Dr. Mark Cunningham. He is our forensic psychologist who has assisted us assessing Mr. Mullins for the recommendations. It's my understanding, Judge, that you have that information. I've given to the Court, this morning, clean copies of those documents, including addenda addressing the issue of malingering. We would ask the Court to make those a formal part of the record in this case.

THE COURT: And Mr. Brown, before I respond to Mr. Moffat's request, you're ready to have a sentencing hearing today?

MR. BROWN: Yes.

THE COURT: Let's have a little preview of what you [5]would expect. Are you going to call witnesses today?

MR. BROWN: I don't anticipate calling witnesses. I have a number of family members of the victim who desire to be heard, and the Court should hear them. I have also submitted information for the Court's, ah, perusal and, ah, we anticipate that we will be discussing that information at some length. And, ah, I do have a videotape that's gonna take approximately 25 or 30 minutes that we want the Court to view. Other than that, I don't intend to have any witnesses, other than the statements of the victim's family.

THE COURT: Okay. And Mr. Moffat, are you going to be calling any witnesses today?

MR. MOFFATT: Judge, we will not be calling witnesses; and Mr. Mullins may want to address the court and limit comments to the Court, if that's all right.

THE COURT: Okay. Let's talk about documents.

MR. BRADSHAW: Judge, I wonder, before we begin, I wonder if it's possible to get Mr. Mullins unshackled in front. It's right uncomfortable to sit shackled behind.

THE COURT: Mr. Brown?

MR. BROWN: That's fine.

THE COURT: Can we have somebody take care of that? Do we have a Transportation Officer here? Would you, please.

Thank you.

Ah, yesterday the clerk bought me a document that's [6]got Mr. Brown's name on it. It's called Plaintiff's Pre-sentence Information Submitted, which I've read. And the clerk also brought, ah, some documents that included a CD from Mark D. Cunningham and a document entitled "Provisional Capital Sentencing Evaluation and Mitigation." And I read those things.

And today Mr. Moffat gave me a document, a letter from his office, April 9th, 2002, attached. It's entitled "Addendum To Provisional Capital Sentencing Regarding Mitigation," which I have not read.

Mr. Brown, are there other documents besides that?

MR. BROWN: No.

THE COURT: Mr. Moffat?

MR. MOFFATT: No, Your Honor.

THE COURT: Okay. So Mr. Moffat, the fact that I haven't read the two-page addendum, are you gonna walk me through that when it's your turn to speak?

MR. MOFFATT: I can, Your Honor. Yes. I don't know if the Court intends to rule directly from the Bench or if the Court is gonna take some time to consider. Whenever you have an opportunity to review that, we would appreciate it. I'll do my best to tell you about it.

THE COURT: Okay. Then let's keep going.

Mr. Brown, usually the State goes first, and I'm assuming you're planning on that. So would you like to make a [7]recommendation?

MR. BROWN: Your Honor, what we would like to do is we'd like to have those family members of the victim who desire to make a statement make that statement first, and then I'll make my recommendations to the Court. I discussed that matter with counsel and they agreed that that would be appropriate.

THE COURT: Now there's only two choices available today; right?

MR. BROWN: That's correct.

THE COURT: And do either one of those sentences include a potential fine?

MR. BROWN: Ah, well I'm sure they do include a potential fine; I don't think the word requesting any fine, and so that shouldn't be at issue.

THE COURT: So the two choices would be life, or life without parole.

MR. BROWN: That's correct.

THE COURT: Okay. How many family members want to speak yet? Do you know?

MR. BROWN: I don't know. But I know that one of them that does desire to speak is Merridee Torgerson; that we should take her first and then I think that maybe three or four other family members, maybe more, desire to be heard.

VICTIM'S FAMILY STATEMENTS

[8]THE COURT: Okay. Mrs. Torgerson, are you here?

MZ. TORGERSON: Yes.

THE COURT: Good morning.

MZ. TORGERSON: Thank you.

THE COURT: I was listening to Mr. Brown. I don't think I quite caught your first name. What is it.

MZ. TORGERSON: My name is Meridee Torgerson.

THE COURT: Say your first name.

MZ. TORGERSON: Meridee.

THE COURT: How about spelling that for me.

MZ. TORGERSON: How do I spell it?

MR. MULLINS: Um-hm.

MZ. TORGERSON: M-e-r-r-i-d-e-e.

THE COURT: Where do you live, Mrs. Torgerson?

MZ. TORGERSON: I live in Battle Mountain, Nevada.

THE COURT: And are you -- were you related to Mrs. Davis?

MZ. TORGERSON: I'm Amy Davis's daughter.

THE COURT: Okay. Ah, did Amy have other children, besides you?

MZ. TORGERSON: Yes, she did. I have three brothers. Ronald, Berdell, and Bill.

THE COURT: Are they hear?

MZ. TORGERSON: Yes, they are.

THE COURT: Ronald, where are you? Hello, Ronald.

[9]And Berdell? Good morning.

And I forgot the last name already.

MZ. TORGERSON: Bill.

THE COURT: Bill. There you go. Hello, Bill.

MZ. Torgerson, you wanted to make a statement, so please go ahead.

MZ. TORGERSON: Okay. What I would give for one more time to be able to pick up the telephone and say, "Hi, Mom. What are you doing?"

"Oh, I'm just sitting in my chair relaxing me to get that little brush of adrenaline."

She's always ready for me to one more time be able to wrap my arms around her and whisper in her ear, "Mom, I love you." Morris Mullins has stolen this from my brothers and me. He has stolen a mother, her love, her kindness, her advice.

Morris Mullins has stolen from our children a loving and caring grandmother, all of her special little shared secret confidences. I'm always getting this one thing that was so important to them at their time of life. He has stolen from our grandchildren a woman who loved every one of those little people in their special way. Every single holiday they received a note and a dollar bill in the mail. I see their little faces light up with so much excitement. You couldn't have traded this dollar for something of great great value.

[10]I could stand here for so long and talk about my mother, but this is not about my mother. This is about Morris Mullins. It does not matter whether she was a good person or not. It does not matter whether she had one more hour or maybe more years to live on this earth.

Morris Mullins made a decision. It was not his decision to make. This is God's decision.

For almost a year now we have been hearing about Morris Mullins and Morris Mullins's rights. I would like to know what right did he have to step on my mother's property? What right did he have to enter her home? What right did he have to hit her to beat her to suffocate her and then beguile her body? Maybe it's time that we stop and considered someone else's rights and honor them.

My brothers in life entered into a plea with the State of Utah. I feel in my heart it was a very foolish decision. Had we been allowed more time, I don't think we would have agreed to that decision. I think my Aunt Ruth May says it best. It's God's responsibility to forgive Morris Mullins. It's our responsibility for him to attend that meeting. That kind of sums up my feelings.

Every day people come up to me and they say, "Merridee, I know how you feel. I understand. I'm sorry." Your sorry? You guys don't have a clue. By the grace of God hopefully your experience spared getting to experience this, [11]this sleepless nights, the terrible dreams, the trying to hold your emotions in check to the point your throat is so sore and raw you can't speak. That knot of pain inside that never goes away. It never melts.

My brothers and I will never be able to go back to the happy carefree lives we had before this. Sometimes I wonder if we will even be able to survive.

We plead with the Court, please do not give Morris Mullins parole. No parole. Never, none.

Do we want to allow him the opportunity to abuse one of our elderly? Do we want to allow him the opportunity to torment more families and put them to anguish? Do we want to allow him the opportunity to terrorize another community? I really don't think that's what we want.

We ask the Court to consider if this was your wife, your mother, your daughter, your sister, how would you feel? We, Amy Davis, request life without parole.

Thank you.

THE COURT: Thank you, Mrs. Torgerson. Mrs. Torgerson, do you know if there are other family members what want to speak?

MZ. TORGERSON: I believe my brother.

MR. RON DAVIS: Your Honor, I would like to speak.

MZ. TORGERSON: And there's two granddaughters, I believe.

[12]THE COURT: Um-hm. This is one of Mrs. Torgerson's brothers.

MR. RON DAVIS: Yes, Your Honor.

THE COURT: Tell me your name again.

MR. RON DAVIS: My name is Ron Davis, Amy's oldest son.

THE COURT: Where do you live in, Mr. Davis?

MR. RON DAVIS: I live in Joseph. I TEACH at the Snow College South.

THE COURT: Um-hm.

MR. RON DAVIS: Um --

THE COURT: Tell me a little bit about Amy's posterity -- four children.

MR. RON DAVIS: Well actually there's four living children. There are two that are also deceased.

THE COURT: Um-hm.

MR. RON DAVIS: Ah, I cannot give you statistics, sir. I -- there's, ah, extensive grandchildren, ah, great-grandchildren, ah, there, most of which are in court. Not the great-great or the great-grandchildren so much, but all of the grandchildren are here and all of the children are here.

THE COURT: So Amy had six children.

MR. RON DAVIS: Yes. She had six children.

THE COURT: Two have deceased?

[13]MR. RON DAVIS: Uh-huh.

THE COURT: Did each of those six have a family?

MR. RON DAVIS: Ah, no. Two -- the two that are deceased, deceased quite young --

THE COURT: I see.

MR. RON DAVIS -- and so the four -- the four of us that survived, we do have families. Yes.

THE COURT: Okay. And -- and you live in Joseph and you teach at Snow College South and you wanted to say something, so go ahead.

MR. RON DAVIS: Yes. Ah, basically I would just like to say that I don't know, sir, exactly what kind of an oath you took when you took this office when you was elected to this office. Ah, I'm pretty sure that it probably goes something like what we see on the side of most police cars across the United States. Ah, there's the city. A lot of times, always police, --

THE COURT: Um-hm.

MR. RON DAVIS -- and a lot of times, to protect and serve. Ah, I'm sure that this was --would be the basis of your -- of your oath of office, too.

THE COURT: Would you like to know what it is?

MR. RON DAVIS: Yes, I would.

THE COURT: I'll tell you. Ah, the oath is this. I do solemnly swear to support, obey, and defend the [14] Constitution of the United States and the Constitution of this state, and to discharge the duties of my office with fidelity.

MR. RON DAVIS: I'm a little surprised. I probably thought you would read it word-for-word. But at any rate, to get back at what I want to say was that I think that like any -- elected official, police officer, I think you kind of stake claim to your territory. Ah, you look upon us people as your people to serve and protect. And I just basically would like to say that the brothers and sisters, the sons and daughters, the grandsons and granddaughters, and great-grandsons and great-granddaughters and your extended community that you serve, ah, I don't think that there's any of us that would not ask -- well no, beg you, please do not turn this -- this Satan worshipper or Satan -- not worshipper, but well, I -- I feel like he's a disciple of Satan. Please don't turn him loose on the world again.

Ah, he needs the sentence the maximum that you can sentence him to, under this plea bargain agreement, without a parole. We cannot let this thing walk the face of the earth again. We've got to keep him incarcerated for the rest of his natural life. I hope that you will see it that way and that's about all I got to say.

THE COURT: Thank you.

MR. RON DAVIS: Thank you for your time.

THE COURT: Thank you, Mr. Davis.

[15]Excuse me. Are there other members of the family who wanted to speak?

MZ. FORTUNE: I would, Your Honor.

THE COURT: Hello. Good morning. Come up, if you would. Thank you. Tell me who you are.

MZ. FORTUNE: My name is Meridon Fortune and I Merridee Torgerson's oldest daughter.

THE COURT: Hello, Mrs. Fortune. So is your first name spelled the same as your mother's name.

MZ. FORTUNE: Well I couldn't comprehend the two R's so I dropped one. So it's M-e-r-i-d-o-n.

THE COURT: And your last name is Fortune.

MZ. FORTUNE: That's right.

THE COURT: Just like having a fortune.

MZ. FORTUNE: I do.

THE COURT: Where do you live?

MZ. FORTUNE: I live in Battle Mountain, Nevada.

THE COURT: Okay. You wanted to say something, so go ahead.

MZ. FORTUNE: I -- I do. As you know, my father is Marion Fortune and I am Amy Davis's granddaughter and I have a little girl at home who I have named after my grandmother.

And my grandmother's a wonderful lady and I could go on like my mother and tell you all of the fun, wonderful things about her, but one of the biggest reasons I named my daughter after [16]her was that my grandmother was a great teacher.

My grandmother taught, um, the concept -- concept to my mother that for every choice we make, there is a consequence. My mother taught that same lesson to me and I'm trying to instill that in my young daughter.

On May 2nd, 2001, Morris Mullins made a choice that day. He made the choice to murder my grandmother and for his choice there is a consequence. My grandmother has taught me this lesson through my mother.

I beg the Court that you will reinforce this valuable lesson that my grandmother has instilled in her family. Please sentence him to life in prison without parole and set an example for Amy Davis's great grandchildren to see that yes, there is a consequence for every choice that we make.

Thank you.

THE COURT: Thank you, Mrs. Torgerson.

Was there someone else what wanted to speak? Hello. Come up, if you would, please. Good morning. Who are you?

MZ. HAMILTON: I'm Rhonda Hamilton.

THE COURT: How do you spell your name, Rhonda?

MZ. HAMILON: R-o-n-d-a H-a-m-i-l-t-o-n.

THE COURT: Where do you live, Mrs. Hamilton?

MZ. HAMILTON: I live in Wyoming.

THE COURT: And are you related to Amy Davis?

[17]MZ. HAMILTON: Yes. I'm her oldest granddaughter.

THE COURT: So you're -- you come from Ron?

MZ. HAMILTON: Ron is my father.

THE COURT: And you live in Wyoming. What KIND of work do you do?

MZ. HAMILTON: I'm a homemaker. I take care of my precious things.

THE COURT: How am children do you have?

MZ. HAMILTON: I have two.

THE COURT: And you wanted to say something.

MZ. HAMILTON: Yes.

THE COURT: Go ahead.

MZ. HAMILTON: Amy -- Amy Miriam Norris Davis was one of the most wonderful people I have ever had the privilege of knowing. She was a very gentle and kind person. She cared deeply about her family and friends.

Grandma Amy was very devoted to her family. She made it her business to see to it that each one of us was taken care of always. We have missed her so very deeply this past year. She would do anything in her power to see to it that our needs were met, and that usually meant putting our needs above her own. She was a very unselfish person. She would give until she had no more left in, if it meant that someone else to benefit.

I have yet to meet a person who knew my grandmother [18]who didn't go on and on about what a beautiful, wonderful sweet, kind and loving person she was. Both in her life and now that she's gone, people have said this to me.

She was a person who loved much. She had contact with every single family member and she always knew how we all were, every day.

Appendix B

As a child, I remember spending summers at grandma's house. Grandma had a wonderful way of making you feel like you were the most important person in her life, or for that matter, in the whole world.

Many times when I was hurt, whether it was a scraped knee or a bruised heart, she'd take me in her arms and love me better. And those arms that held me, her hands that served me, her wonderful laugh and her twinkling eyes that were so bright and full of life.

Grandma Amy had a servant's heart. She had a way of always making you feel comfortable. One of her favorite ways she did this was through food. When we came for a visit, we would never dare eat before leaving. As soon as the hugs and the hellos were taken care of, she would set for seeing that we were not hungry. Grandma to whip up a feast in no time at all, something that she did for many people in this community. Not only through the school lunch program, but also by providing meals to those in need. And knowing her, if Morris Mullins asked her for help, she would let him into her home, [19]thinking that in some way she could help him, too. That's the kind of person she was.

She served faithfully in every area imaginable in her church. She taught Sunday school, Young Womens, she was involved in Relief Society, did visiting teaching. She and grandpa were the dance leaders for the young people in an area -- excuse me -- an area in her life in which she touched many youth in this community for many years.

And since her retirement, she has spent most every Saturday working in the LDS Temple as a temple worker. She also worked in the Genealogy Library every Wednesday. All of these things she did as a sacrifice of her own time because she loved and cared about people and was devoted to her children. Faithful would be a word to describe Amy Davis.

The time she spent taking meals, flowers, doing for others and seemingly an unimportant little lady in a little old house tucked behind fancier homes, she was small and easiest to overlook because of other meekness and innocence. These were qualities that made her normal. But she was a giant inside. Giant in love, faith, kindness and gentleness.

She did not deserve this. I hope she never knew what hit her, but I'm afraid that's not what happened. What Morris Mullins did to her was the most degrading thing that could have possibly ever happened to her. She lived her life in honor with values and morals that would put most of us to [20]shame. She would never understand how such a terrible evil hateful thing could happen to anyone. It makes it so much worse for us, knowing that her goodness, kindness, gentleness, innocent and loving nature was taken away by such an evil act through torture, beating, the degradation of rape. This was unspeakably cruel.

None of us could understand what Morris Mullins could have possibly gotten from raping and beating a 78-year-old defenseless little old lady, further proof of the depravity in him. And on behalf of the entire family,

we beg of you, Judge Mower, to sentence him, Morris Mullins, to life in prison without the possibility of ever being paroled so that not one more innocent, kind, loving, elderly, helpless and defenseless grandmother is ever brutally beaten, raped, strangled, and killed at the hands of Morris Mullins and company ever again.

Unfortunately, nothing will ever make this right. Our grandmother and my friend and mother is gone. There's a huge hole in our hearts and in our lives. We cannot even begin to tell you of the pain and suffering that we have endured because of the evil actions of Morris Mullins. The best we can hope for now in all this nightmare is that some justice will be served by you sentencing Morris Mullins without the possibility of parole, which makes this world a safer place for all women and especially the little old [21]grandmas. I pray that this will be your decision today. Thank you.

THE COURT: Thank you. Before you leave, I want to ask you a couple of questions.

MZ. HAMILTON: Sure.

THE COURT: Do you know if there are other family members who want to speak?

MZ. HAMILTON: I do not know.

THE COURT: Let me ask you a couple of questions, because sometimes women know more about statistics than the men do.

MZ. HAMILTON: Huh-huh.

THE COURT: You said that Amy was 78. Do you happen to know of her birthday?

MZ. HAMILTON: Her birthday was November 21st, um -- I'm not clear on the year, but I'm terrible at math.

THE COURT: And if there was a grandma, there must have been a grandpa. So who was Amy married to?

MZ. HAMILTON: She was married to Lex T. Davis.

THE COURT: And he predeceased her by how far?

MZ. HAMILTON: I believe it was 30 – 33 years.

THE COURT: So she was alone for a long time.

MZ. HAMILTON: A long time.

THE COURT: And, ah, there are children, grandchildren, and great grandchildren?

[22]MZ. HAMILTON: Um-hm.

THE COURT: How many?

MZ. HAMILTON: I believe there are nine grandchildren, as we already heard. Six children. Four are living. And the great grandchildren, oh --

THE COURT: If you don't know, just say you don't know. It's okay.

MZ. HAMILTON: I'm not sure. I would guess probably 20-ish.

THE COURT: And Amy was employed, is it sounds like.

MZ. HAMILTON: Yes, she worked very hard. She was a very hard worker.

THE COURT: She worked for the Sevier School District.

MZ. HAMILTON: Uh-huh.

THE COURT: Did she work for anybody else?

MZ. HAMILTON: Um, not that I'm aware of.

THE COURT: Okay.

MZ. HAMILTON: She served as the lunch -- as a lunch lady and later headed that department.

THE COURT: Oh, so she was -- did some supervision work there, too.

MZ. HAMILTON: Yes.

THE COURT: Okay. Thank you very much.

MZ. HAMILTON: Thank you, Judge Mower.

[23]THE COURT: Are there other family members who wanted to speak?

(No response)

Apparently there are none.

Mr. Brown, we'll hear you.

PLAINTIFF'S RECOMMENDATION

BY MR. BROWN: Thank you, Your Honor. It's gonna seem a little unusual to say it, but we're all very lucky to be here today. Amy Davis is not lucky and her family may be suffering greatly, but we are all lucky to be here today.

There's so much luck involved in being here today that it's startling, because if it hadn't have been for the luck of officers involved in this investigation, Morris Mullins would still be out there and he would still be doing what he did before.

I know that I've supplied to you some of those reports, ah, with regard to how this transpired. The first really lucky thing was that on May the 4th a very succinct teletype was transmitted, indicating what kind of event had occurred and asking if anybody else had had a similar occurrence. The first lucky thing was that that teletype was responded to by the Yuma authorities because they

had had a similar incident that had occurred a year earlier and they were able to supply local law enforcement, ah, with an indication of who they had suspected and who they had, in [24]fact, had under arrest from the 8th day of June of 2000 until the 4th day of April of 2001. At that point they had to release him, but they indicated that this was so similar to an occurrence that they had had, that, ah, they thought local law enforcement should be looking for Morris Mullins.

The second lucky thing was that as one of the officers was leaving the Richfield City Police Department, he observed a vehicle that had been described, ah, as being Morris Mullins' father's right here in Richfield. Mr. Mullins was apprehended two days after the incident. What that means is that from the 6th -- or the 8th day of June, 2000, until the 2nd day of May of 2001, when Amy Davis was murdered, this defendant had been released for less than a month -- 28 days.

One would think that having been accused in Arizona and having been in jail for that period of time one would be extremely reluctant to place himself in a position to be accused again. We now know that's not the case. We now know that Morris Mullins, despite the fact that he had been in custody that length of time, chose to go out and look for a victim.

We're lucky that two neighbors or two people in the vicinity, Camille Syddall and Shirlene Davis were able to recall and describe a young man that had come to their residences and had provided them with a fake story as

to why he was there looking for his nonexistent dog and describing [25]his non existent residential location. What he was doing is the same thing that has been described in the defense psychological analysis of not just Mr. Mullins, but his family. Seeking out the old, the frightened, the infirm. Seeking out a residence where, as, ah, is indicated, there are no toys outside, the yard is well kept, and, ah, would appear to have an elderly person who could be easily duped. The only difference is that, ah, when Morris Mullins finds such a location, his intent was not to take advantage of them financially. His intent was sexual gratification and murder.

We're lucky that all those things came together, and we're finally lucky that throughout the subsequent investigation, Mr. Morris Mullins, on occasion, showed his true colors. He showed his true colors in his discussion with another inmate where he said that he would plead insanity, rather than go to prison. I think that's a demonstration of, ah, his intent all the way along. His intent was to take advantage. His intent was to sexually gratify. His intent was to murder and his intent was to get away with it.

He has a total lack of regard for the law. Mr. Mullins has demonstrated that he cannot -- he cannot be trusted, under any circumstances, to be out in the public.

I have EXHIBIT 1, Your Honor, which is a tape. This tape was done by an officer in the Sevier County Sheriffs Department, Deputy Lefevre. It took place on May the 16th. [26]The defendant, on May the 16th of 2001, ah, had done damage to the jail, was incorrigible. As a result of

that he was placed in a restraint chair. I'm going to play a short portion of this tape. It takes place approximately 20 minutes after he was placed in that chair and I think from that the Court will glean the defendant's attitude when he doesn't believe that anybody's watching.

(Mr. Brown played videotape.)

THE COURT: Will you stop the tape for a moment, Mr. Brown. Somebody spoke. Who was it?

MR. BILL DAVIS: Would it be possible to get this turned just a little bit or something to we could see it.

THE COURT: Mr. Brown?

MR. BROWN: Well I'll do the best I can.

THE COURT: Fine.

(Mr. Brown played the tape again.)

THE COURT: Mr. Brown, I want to ask you a couple of questions about the tape. You said the date was May the 16th of 2001.

MR. BROWN: That's right.

THE COURT: And, ah, the photograph was Gerald Lefevre.

MR. BROWN: And he's the one that did the video. He was the one that set it up and operated it and he's the one that observed, talked.

[27]THE COURT: It's most likely that the pictures were taken inside of the building.

MR. BROWN: They were in the Jail, yes.

THE COURT: And it looked like Mr. Mullins was in a room, but the door was opened. What kind of a room was it?

MR. BROWN: The room is the basic booking area.

THE COURT: And it looked like I could hear other sounds of voices coming from other people that weren't in the picture. So there were other people in there, too.

MR. BROWN: There are people that are involved in the operation of the Jail and, ah, all of the officers have the handheld radios that they used to communicate.

THE COURT: So those are some of the sounds I was hearing, other people talking.

MR. BROWN: Yes.

THE COURT: Okay. I think that's all I want to know about the subject, so go ahead.

MR. BROWN: What you observed, right before the end of that, was the defendant becoming aroused and by the use of manipulation of his legs, ah, coming to a form of ejaculation. The thing that's startling is that what brought him to that point was the nurse. As you saw, the nurse was a fairly mature woman.

Given his comments during that ranting and raving episode about women, he demonstrated what he really believes, [28]what he thinks, and, ah, he also demonstrated what he's capable of. Talked several times about hitting women in the head to get them to perform some sort of sexual act. Talked about knocking the woman's teeth out so that it would be more pleasurable for him.

We can't afford, under any circumstances, to allow this defendant to ever be on the outside. We can't trust the good judgment of the Board of Pardons to accomplish that. We have to make sure that there is no chance of that ever happening. And we've seen how close we came to not being here. At any one of those events during the investigation that would occur, we may not have been here, and God knows where Mr. Mullins would be and what he would be doing. Now is the time to ensure that it never happens again.

Thank you.

THE COURT: Thank you, Mr. Brown.

Mr. Brown, another couple of questions for you. Is there any direction in the statute, somehow, to lists of

aggravating and mitigating factors that I'm to consider in making a judgment in this kind of situation?

MR. BROWN: There are lists of aggravating and mitigating factors, but not -- they're not a conclusive list. They're just lists that include them.

THE COURT: And if the judgment is life without parole, does the judgment -- does it require to include any of [29]those aggravating factors?

MR. BROWN: No.

THE COURT: Um, and the sequence of events again, June 8th, 2000, Mr. Mullins is in jail in Arizona. April the 8th -- no -- April the 14th, I think you said.

MR. BROWN: No. April the 4tn.

THE COURT: April the 4th, 2001, he's released from jail in Arizona.

MR. BROWN: Correct.

THE COURT: May the 2nd, 2001, a homicide occurs in Richfield, Utah --

MR. BROWN: Correct.

THE COURT: -- ah, at the hands of Mr. Mullins.

MR. BROWN: Yes.

THE COURT: And then May the 4th --

MR. BROWN: He's arrested.

THE COURT: Um, you said that an officer saw a vehicle that matched the description. Did the description come from the police in Arizona?

MR. BROWN: Yes.

THE COURT: Okay. And then the video is made the 16th --

MR. BROWN: Of May.

THE COURT: -- of 2001.

MR. BROWN: That's correct.

[30]THE COURT: Okay. Thank you, Mr. Brown.

Mr. Moffat, over to you.

DEFENSE RECOMMENDATION

BY MR. MOFFATT: Thank you, Your Honor.

Your Honor, if it would please the Court, Mr. Brown, and members and friends of members of Amy Davis's family and friends, ah, I have a lot I'd like to say to the Court today about Mr. Mullins, as you are probably well aware. Before I do, Judge, I'd like to begin by extending

to the family and friends of Amy Davis, on behalf of the members of the defense team, our profound sorrow and condolences over the death of Amy Davis.

Judge, everything that we have heard about Amy Davis has led us to conclude that she is everything and more than what the victim's family has testified to this morning. She was an incredibly loving, peaceful and caring mother. Ah, the information we got from folks who knew her and information provided to us by the District Attorney's office and information we gleaned through our mitigation investigation has confirmed that. We understand the outrage, the anger, um, and the anxiety that the family feels over the circumstances that were created by Mr. Mullins and we are truly sorry for that.

What I want to make clear to the Court and what I want to make clear to members of the family and friends of Amy [31]Davis is that in saying what I'm about to say to the Court, it is not my intent to justify what Morris Mullins did or to excuse it. What he did was horrible. Morris knows it's horrible and there is absolutely no excuse for what occurred. This is not a circumstance, Judge, where we are coming to the court and saying, "Don't administer the consequence." There will be a consequence. Morris expects there will be a consequence, and that consequence, under the best of circumstances, is years and years and years -- decades of life behind bars.

What we are asking that this Court do today is simply allow the Board of Pardons -- people who deal with violent offenders all the time -- allow the Board of Pardons some

discretion at some time in the very distant future to be able to make a decision about whether or not parole is even a possibility for Mr. Mullins.

We're not here today to ask you to give it to him. We're not here today to ask you to guarantee it to him. We're simply asking that we give somebody who's gonna be dealing with Mr. Mullins for a long long time, far longer than what Mr. Bradshaw and Mr. Hummel and I and Mz. Dowling dealt with him, far more than what the Court has dealt with him. Someone who will deal with him long term to make a decision about whether or not he qualifies for the possibility of parole at some future date, taking into account, of course, his [32]behavior, this particular offense, his institutional record, and whatever advances in science -- forensic science, in pharmacology that may come to light in the future to assist Mr. Mullins.

What we will be asking and what I will be asking of this Court is that we allow Mr. Mullins some chance to live a normal life, a chance, Judge, that I would submit to you that he has never had because of his upbringing. Because of his family life, this young man has never had a chance at a normal life.

Now we have submitted to the Court in our case the report of Dr. Cunningham, and as I stated at the outset, Judge, that report is a compilation of a whole host of things. An extensive review of the records that we have gathered in this case. Very very hard work done by Jan Dowling and members of the defense team, with respect to preparing the mitigation case. And quite frankly,

Judge, given the chaotic and dysfunctional and nomadic lifestyle that Morris Mullins lived, it's a miracle that we were able to locate people to talk to who knew Morris who were willing to even address us. It's a miracle that we have any records at all to present to the Court, and that's apparent, Judge, and will become more apparent as I -- as I talk about this.

The bottom line is Morris Mullins never stayed in a place long enough for anybody to know him. So to have these [33]things and to be able to corroborate what it is that Dr. Cunningham has found is nothing short as a miracle. Just as Mr. Brown indicates that he is lucky, we are truly lucky that we have that much information to present to the Court.

In assisting Morris Mullins's situation and the option, that is, you have before you, with regard to sentencing, Judge, we want you to rely on Dr. Cunningham's report. I'm not gonna just quote it, chapter and verse. It's an extensive report, a very detailed report, and I can't do it justice by reading it or quoting from it at length, and I don't intend to do that. But when I read the report, when I assess what I know about Mr. Mullins, what I know about this case, I think it's important for me to communicate to the Court my understanding of it and my understanding of this situation, Judge, is that Morris Mullins committed a horrible crime. It caused a lot of pain. But those acts, Judge, didn't occur in a vacuum. They occurred, Judge, in the context of what I can only describe as the most profoundly dysfunctional upbringing and rearing and family life that I have ever seen -- that members of the defense team have ever seen, and that says a lot.

Appendix B

Mz. Dowling is in the business of doing mitigation write-ups and mitigation work for capital defendants. She, herself, is a lawyer who represented capital clients and for her to come to me and tell me that nobody has more pathetic [34]experience in life than Morris Mullins means something to me.

It's certainly the case in my experience. It's certainly the case in Mr. Bradshaw's experience. And I think, Judge, it would be wrong for the Court and for anybody to underestimate the role that that dysfunction has played in Morris's development. Without question, it's played a major role. It's played a major part in him developing, ah, into the individual that committed this particular offense. But just as it would be wrong to underestimate the role that this dysfunction has played in his life, it would be wrong, Judge, to underestimate the benefit of removing Morris Mullins from that dysfunction and the potential that he may have to correct the errors that have become -- that he has learned as a result of the dysfunction that he experienced.

The bottom line is this, Judge. Living in that dysfunction was a very very dangerous thing for Morris, became a very very dangerous thing for the citizens of Richfield. We have now removed Morris from that dysfunctional horrific environment and he is now in prison with the Department of Corrections. And that, Judge, gives us some hope. It gives us some hope that Mr. Mullins can turn things around. If he doesn't, Judge, he should never get out. He knows that. He'll tell you that. But if he can change, if, over the years and years of incarceration

and correction that takes place, while incarcerated, the rehabilitation, he can change, we [35]simply want, at some point in time, for somebody to have an option to consider something other than him being locked up for the rest of his life. Outside that environment, Judge, I would submit to the Court he has a chance.

Now when you -- when I -- when one looks at the role that this dysfunction has played in Mr. Mullins's life, I think you have to start out with the notion that Mr. Mullins came into this life -- Morris came into this life with radical and severe limitations. He didn't come into life equipped intellectually or emotionally or psychologically with the -with the barrage of dysfunction that presented itself to him. Mr. Mullins, Judge, is mentally retarded. That mental retardation, Judge, is something that has been evident for some time.

The mental retardation, Judge, was first come upon, if you will, by way of it happenstance by way of something short of -- nothing short of a miracle, and it came about as a result of Mr. Mullins having the fortune -- the good fortune in his travels all over the western half of the United States with his family to find himself in a school where somebody said, "Hey, wait a minute. Somethin's not right with this kid. This kid's got some problems. Hey, we have some resources. Let's get him tested."

And they, at the place -- it took place in Natrona County, Wyoming, at a place called CY, Jr. High School, and [36]Mr. Mullins was given a battery of tests and one of those tests was a standardized IQ test. The standardized

IQ test revealed that Mr. Mullins had an IQ, when tested, of 63, clearly in the retardation intellectually deficient range. In addition to that, Judge, we had him tested. We had him tested in Monroe this year. We'll see, from Dr. Cunningham's report, that his full IQ was 72, clearly in the retarded range.

There's been discussion and will be distinction about Mr. Mullins and his malingering. Mr. Brown has been very up front with me and has said that Mr. Mullins is a malingerer. There were certain statements made to an inmate about "I'll plead insanity and get off. I'm gonna submit to the court that the IQ and the mental retardation are real." They're not fake. And I would submit to you cannot be faked.

There was no reason for Mr. Mullins to fake retardation, if such a thing were possible, when he was tested in Natrona County back in 1997. Likewise, Judge, he didn't fake retardation when Dr. Gregory tested him. As a matter of fact, she reports just exactly the opposite. Mr. Mullins attempted to employ strategies that would enhance his performance on the test, as opposed to fake bad or just willy nilly answer questions in an effort to make himself look bad. And despite those efforts, Judge, he still had an IQ in the intellectually deficient range.

In addition to the retardation, Judge, Mr. Mullins [37] has a very significant problem with untreated ADHD. Attention Deficit Hyperactivity Disorder. Everyone thinks, "Wow, ADHD! Wow! It's the thing. It's the diagnosis of the day." But you cannot underestimate

the very significant limitations that that places on an individual. And again, is it something that is faked? No. It's something that has been reported historically from evidence of speaking to relatives, evidence of speaking to his parents, evidence gathered from the records of a Natrona high school.

Morris Mullins is a severely hyperactive child. He is a person who is not able to sit still. He's a person who couldn't focus. He couldn't stay on task. He couldn't complete the things that were expected of him. He was incredibly impulsive. All of these behaviors are hallmarked of an Attention Deficit Hyperactivity Disorder and were clearly evidence in Morris Mullins in his behavior.

So from the outset, Judge -- from the outset, Morris Mullins was at risk. And when you look at Dr. Cunningham's report, Dr. Cunningham identifies with respect to the ADH, ah -- ADHD symptoms alone that -- that he is at risk for disturbed peer relationships; that he is at risk for academic failure; that he was at risk for juvenile delinquency, for substance abuse, and for adult criminal activity. He was at risk for all of those things just because of the ADHD.

When you look at mental retardation, Dr. Cunningham [38]describes the mental retardation as a profoundly life compromising condition. And for Morris Mullins, it had dramatic impact. It placed him at risk. Again at risk for some very very significant problems.

Appendix B

No. 1. And I think this is evidence from the tape that Mr. Brown showed you. He was at risk for having limited coping skills. He had a limited capacity to formulate coping skills to deal with stressful situations.

No. 2, loses an individual's autonomy and makes him dependent on other people. Well look at the people that Morris Mullins became dependent on in his life.

No. 3. That's obvious.

No. 4. Impairs social interactions and increases suseptibility to influence. Look at the people who were there to influence Morris Mullins. Dr. Cunningham's report talks at length about it. Some of the most dysfunctional people you'll ever meet or hear about in your life.

No. 5. Reduces the ability to exercise good judgment, impairs ability to problem solve and consider alternatives.

And No. 7. Interferes with the ability to identify and comply with social norms.

So Morris Mullins is at risk for all of these things from the moment he is born. And having those limitations, Judge, Mr. Mullins is thrust into this horrifically chaotic [39]and dysfunctional circumstance that he found himself in.

He didn't find himself in it, Judge, he had no option. He's raised in it. That's the world that he knew. He didn't have the tools to cope with.

And when you talk about the dysfunction, it's not stated perse in Dr. Cunningham's report, although it's eluded to. But the bottom line is this. Morris Mullins was raised in a family of gypsies. Now Mr. Mullins's father will deny it, but the bottom line is this. He was -- he is a gypsy. Morris was raised as a gypsy. He was raised exposed to all the tortured morals that this particular group of individuals have.

Mr. Mullins comes into the world with limited capabilities and what he is brought up on -- and Mz. Dowling put it perfectly -- is a steady diet of lying, deceit, and manipulation. Rather than teaching the morals that society would warrant, Mr. Mullins was taught the morals that society abhors and those morals are that it's okay to steal, it's okay to cheat, it's okay to lie, it's okay to take advantage of people. He was taught how to steal. He was taught how to take women's purses. He was taught how to steal items from stores without anybody seeing him, and when did he it, was he punished? No. Morris Mullins was rewarded. He was rewarded by his family. He was praised for his conduct. He got to keep the things he stold -- stole. Sometimes the family sold [40]those things. But he was rewarded for antisocial behavior, Judge, by his own family.

It's significant that his father and the people that traveled with them took advantage of elderly people. Mr. Brown's right. He's doin' what he's taught. That's what he was taught to do. That's what the family did.

What is truly remarkable, in my estimation, about the lifestyle that Morris Mullins was raised in is the isolation of

the lifestyle. The isolation becomes very significant, Judge, because there aren't the probations. When you're isolated from society, there aren't the probations that society offers to maybe correct undesirable behavior. And the isolation of Morris Mullins's case, Judge, is a multifaceted type of isolation. You have the isolation, Judge, that's inherent of being a member of the gypsy culture.

Gypsies are taught, Judge, that you don't trust non-gypsies. You don't associate with them. You don't make friends with them. And if you do, you are your ridiculed. If you fight non-gypsies, you're praised. So he's taught not to associate with other people.

When you move around from town to town to town every couple of months or every couple of weeks, depending on the circumstance, you don't have contact with the community. You don't have an opportunity to make friends. You're not in a place long enough on most circumstances for anybody to take [41]notice of the problems that you are having.

The isolation is also evident, Judge, in the problems that Morris had. Morris is intellectually handicapped. He has problems behaviorally. He's been taught by his parents to keep away from folks, so when he gets into a situation -- and he was always in this situation bein' the new kid in town -- he was ridiculed by the kids that he met. He clearly and obviously was much different from them. They called him horrible names. They'd pick fights with him. They beat him up. He'd get into fights. So he was isolated in just about every way that you can think.

And when you have somebody who has the problems that Morris had and say you had a town, not unlike Richfield, where a member of your community was having these problems, there would be things.

There are safeguards, probations out there to maybe take notice of and change things. Maybe you have a friend, if -- if -- if you had these problems. Maybe you have a friend who has a normal home life and maybe you see that and you say, "Hey, wait a minute. Things aren't right at my home." Or maybe you have concerned neighbors who see what is going on who involve the authorities. Maybe you have caring school people who try to do something. But Morris Mullins really didn't have that opportunity and he didn't have that opportunity because he was in isolation, and in isolation he was just exposed to more and more dysfunction.

[42]So you have horrible things happening at home and there's nobody out there taking notice of it. And there were horrible things happening in Morris Mullins' home.

Now Dr. Cunningham's report talks at length about what occurred in the Mullins household. I'm not gonna get into all of it, judge, but essentially what you have are two parents in City of Ramonia Mullins who have no insight into Morris's limitations. They're not educated folks. And maybe they're doin' the best they can, but they have no ability to appreciate that Morris is retarded. They have no ability to preach that he has ADHD, and if they do and people come to them with suggestions and say, "Hey, maybe you ought to give your son some medication," they

reject it and say, "We aren't gonna do that. We know of a boy who died once on that medication." So they reject the medication out of hand.

It's an environment, Judge, where there is severe alcoholism. Both Ramonia and Steve have a history of alcohol abuse. His mother, ah, consumed alcohol to the point of intoxication on a very regular basis. So we have substance abuse that's open and prevalent in the home. We have all the dysfunction associated with the lying and deceit. We have circumstances where Morris is being regularly beaten and beaten severely indiscriminately. The report talks about him being beaten with hands, with switches, with fists -- with switches, with fly swatters and belts. Morris reports that [43]he's been beaten to the point of being bloodied and that when that happens there have been occasions where his mother wants to hide it from the father, so she orders him to clean up the blood. So that is the -- that is some dysfunction that's just unbelievable.

When you look at the -- what his parents recalled, from time to time on a regular basis he'd be called a fucking idiot, a retard, a loser and a pimple face.

Now there was never a day where Morris Mullins was taught a constructive coping skill on how to deal with an adverse situation. And when you see him in that video, what you are seeing is him modeling the very coping skills that were -- were demonstrated to him by his parents as he was brought up.

What is he doing? He's calling out names. He's saying nasty things. Where do you think he learned that language? That language comes from one place. It comes from the home and it comes from the way in which he was -- was brought up.

Morris Mullins is a very very fragile person, Judge, from a psychological point of view. And when he is under stress he decompensates. And what you see in that video was Morris Mullins in full blown decompensation.

Morris lived in a home, Judge, where there were no limits placed on him. He basically did whatever he wanted. [44]Had no curfew. He could get drunk. He could get high. He could steal and there were no consequences.

The lack of coping skills, Judge, I think is a significant thing. What we've seen in the video is shocking. And it's shocking because Morris gets there and finds himself in that chair, of course through his own actions. And the reason being, Judge, is he doesn't have the tools that a person needs to cope with the circumstances that he found himself in.

I'm not saying that he's an angel who just flipped out in the jail. He's got his own problems and the -- and the situation was one of his own making. But he got there because he doesn't have coping skills. He doesn't have an intellect that allows him to understand the circumstances. He doesn't have the patience because of other problems, um, to sit there and weigh his options. He's an incredibly impulsive individual.

At the time that that video was recorded it's my belief that he was not medicated, and even when he was medicated, Judge, he continued to have these problems. He was medicated for a period of time in the jail and the problems persisted. Was it the appropriate kind of medication? I don't think so. But it was at least some effort to medicate him. But he continued to have the problems.

Ah, a perfect example of -- of the family not [45] structuring Morris appropriately on coping skills is -- is brought about by an incident that was reported in the police reports that we received from Hungry Horse, Montana. Mr. Morris's mother is from that particular area and apparently while in Hungry Horse, Morris was caught shoplifting. And he was caught shoplifting by a store patron and the store patron confronted Morris and his mother about what had just happened. Now the response to that is very telling as to what occurred. Rather than -- than admonish Morris, rather than discipline him or punish him, what happens is his mother gets in the face of the person who is basically busting her son and throws an entire carton of chocolate milk in his car. That's how -- that's how Morris learns to cope.

So how does Morris learn to cope? What's goin' on in the house? There's abuse that he is suffering. He witnesses hardcore physical abuse between mother and father. There are horrible names that are called in the trailer, um, and things aren't going right. When things are going wrong, there are physical violence. That's what Morris Mullins was taught by way of coping skills and that's what we see in the video.

Your Honor, in closing I guess I'd like to say this. Morris did -- committed a horrible crime. He did a horrible thing. He has never had an opportunity to -- to be anybody, other than what he is. An opportunity starts now and he has [46]the opportunity to remain the same and never get out or to perhaps change. What we are asking the Court is that if he does change, that you give somebody the discretion to make the call.

Morris committed this crime, Judge, when he was 17 years old. He is 18 years old today. A life sentence is a long long time. And again it's gonna be a circumstance where Mr. Mullins is going to be in the presence of people who can monitor him, take note of his behavior, take note of his progress or failures and make decisions. What we are asking that the Court do is to give some -- give an institution who will have the ability to monitor Morris Mullins on a long term basis -- give them the ability to make the call in the future.

Thank you.

THE COURT: If you're trying to assess the level of hope for the future you hold out for Mr. Mullins, I don't see anything in Dr. Cunningham's report on how to assess hope for change.

MR. MOFFATT: I don't know that there's a standardized scale to assess hope to change, Judge. And quite frankly, um, under my proposal, I don't want to say that hope for change is irrelevant, but it almost doesn't matter what we hope. Under what I'm proposing to the

Court, if Morris Mullins never changes -- and believe me, it's not a circumstance, Judge, where he can be good for a couple of [47]years and pull the wool over the Board of Pardons eyes. I know the Board of Pardons. I know how they work and I know how thorough they are in their considerations. It's not gonna be a circumstance where he's gonna be able to dupe them into letting him out of prison. That's never gonna happen.

And while Mr. Brown and I understand where he's coming from, says well we don't want to trust that decision to the Board of Pardons, I can't think of anybody better to -- to have that decision than the Board of Pardons, people who deal with inmates, deal with institutionalized people on a regular basis.

Morris Mullins is never gonna be able to trick the Board of Pardons into letting him out. He's not sophisticated enough. He's not intelligent enough to do that. It's just never gonna happen. The only way that Morris Mullins ever finds himself in a position where somebody is gonna be able to let him out is if he undergoes a true change.

Now he's 18. He's gonna serve decades in prison, under my proposal, before that's ever even within the realm of possibilities. We cannot predict, sitting here today, Judge, what it is that science can come up with, if Morris Mullins has problems, to correct those problems. We cannot predict what Mr. Mullins himself will do by way of coming to a realize inside himself to change. We cannot predict those things.

And it just seems to me, Your Honor, that while Mr. Mullins [48]deserves and needs to be punished for what happened here, that forever throwing away the discretion for somebody to make a decision, if these changes manifest themselves, is unnecessary and -- and we would ask that the Court not do that. We would ask for the Court to grant him at the very minimum, and this is all, the possibility that somebody else can make those decisions.

Thank you.

THE COURT: Thank you, Mr. Moffat.

Mr. Mullins, you're entitled to make a statement. If there's something you'd like to say in response so what others have said.

MR. MULLINS: Yeah.

THE COURT: Anything at all. You've got the floor and your time to make a statement.

DEFENDANT'S STATEMENT

BY MR. MULLINS: Judge, I want to let the family know that I'm truly sorry for what I did and, ah, I know it was wrong and, ah, I know it meant a lot of pain. Um, I'm not asking for forgiveness. Nothing like that. But I'd like the family to know that I'm sorry.

And, um, if I don't get parole, well that's my fault. Everybody makes their own choices. It's like Amy Davis's

daughter saying. Ah, but even though I murdered Amy Davis, I'm also sorry. That's all I've got to say.

[49]THE COURT: Thank you, Mr. Mullins.

Mr. Brown, from your point of view is there anything else that needs to be done, before I pronounce judgment?

MR. BROWN: Not that I'm aware of.

THE COURT: Mr. Moffat, have I missed anything?

MR. MOFFATT: You haven't, Judge. I may have. The report you asked me to walk you through, before you, it's on the issue of malingering and the essence of the report is that it would be extremely difficult for Mr. Mullins to feign his performance on the tests that are mentioned in quote at length in Dr. Cunningham's analysis.

THE COURT: Thank you, Mr. Moffat.

COURT ORDER AND FINDINGS

THE COURT: In this case I'm satisfied that I have herd the recommendations of counsel. I've read the reports. I've listened to the statements made by the family members. I want the family members to know I appreciate the time that they took to write things down. And I hope that you preserve what you've written, cause I know it takes a lot of effort to translate your thoughts into words and write them down. It's an important process to go through to articulate what you think and write it down.

So these are important documents that you produced and I hope you save them because they'll be important to you as time goes by.

I appreciate the work that Dr. Cunningham did and [50]the lawyers on behalf of Mr. Mullins. And Mz. Dowling -- I'm hoping I'm saying your name right.

MZ. DOWLING: You are.

THE COURT: You ought to spell it so it's right in the record.

MZ. DOWLING: D-o-w-l-i-n-g.

THE COURT: Mr. Mullins, life certainly has been chaotic, and that's probably an understatement. And we certainly wonder whether it's possible to place all of the sins of the children on the heads of the parents or whether the children have some responsibility for their own actions. Ah, when I balance, ah, the family's requests and Mr. Mullins' request and the need to send a message, it's my judgment that the penalty about to be imposed is a term of life imprisonment without the possibility of parole, and that's the order that I'm making in Mr. Mullins' case.

Mr. Brown, I'd like you to prepare an order to that effect so that I can sign it, and it will be transmitted to the Department of Corrections. Make sure that copies go to Mr. Moffat and Mr. -- well just Mr. Moffat. I don't know when the appeal time is so that he'll know when the appeal time starts to run.

And I sincerely hope it's the right judgment, Mr. Mullins, and if you're gonna be with us for a long time and have a chance to change, I hope -- not under the present [51]circumstances -- I'm hoping that you'll find some way to be productive.

And I say to the family of Mrs. Davis at some point you've got to find a way to get beyond pain and grief and go on with your lives and I'm hoping that you're finding a way to do that, too. I'm not sure whether anything that I say can help that to happen. You just have to find the wherewithal to get in your own hearts and get beyond pain and grief and I'm hoping that you're gonna find success in doing that.

Mr. Brown, is there anything else you have to do at this point?

MR. BROWN: Nothing.

THE COURT: Mr. Moffat?

MR. BRADSHAW: Your Honor, Mr. Mullins' lawyer will ask before the Court that the Court facilitate a visit with Mr. Mullins with his family, prior to him being transferred back into prison. I don't know if that's a possibility, but I make that request.

THE COURT: Mr. Brown, I think they can visit at the prison. Let's see. The transportation officer, what instructions do you have.

TRANSPORTATION OFFICER: It's against Department policy, Your Honor, and would impose a safety risk.

MR. HUMMEL: Your Honor, can I say something?

THE COURT: I'm ordering that the Transportation [52]Officer follow my order and not the Department policy and provide a visit with Mr. Mullins and his family, as long as it's done in a secure way so that they're separated by a partition and have no physical contact with each other. So work with the Sheriffs Office and they'll assist you in providing a place for Mr. Mullins to visit.

TRANSPORTATION OFFICER: Yes, Your Honor.

THE COURT: Thank you ALL for attending court today. I appreciate it very much. Court's in recess.

(The above entitled proceedings were completed.)

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APPENDIX C — MEMORANDUM DECISION AND ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE, FILED NOVEMBER 1, 2016

SIXTH DISTRICT COURT, STATE OF UTAH
COUNTY OF SEVIER

State Courts Building 845 East,
300 North Richfield, Utah 84701
Telephone: (435) 896-2700
Facsimile: (435) 896-2743

STATE OF UTAH,

Plaintiff,

v.

MORRIS T. MULLINS,

Defendant.

MEMORANDUM DECISION AND ORDER

Case No. **011600140**

Assigned Judge: **Marvin D. Bagley**

Before the Court is defendant's motion to correct an illegal sentence. Plaintiff filed a response in opposition, and the Court held oral argument. The motion is ready for decision.

Appendix C

DECISION

Defendant's motion to correct an illegal sentence is DENIED.

BACKGROUND

The facts presented to the Court in connection with the present motion are few, but undisputed. Approximately two months before his eighteenth birthday, defendant murdered an elderly woman in her home. During the subsequent criminal proceedings, defendant pleaded guilty to aggravated murder in exchange for plaintiff's promise to drop the remaining rape charge.

The Court held a sentencing hearing a few months later. After considering the parties' arguments and filings, as well as several statements from the victim's surviving family, the Court sentenced defendant to life in prison without the possibility of parole. Defendant filed the present motion eleven years later.

ANALYSIS[1]

Defendant contends his current sentence is illegal in light of the United States Supreme Court case *Miller v. Alabama*, 132 S. Ct. 2455 (2012). In support of this position, defendant presents two arguments. First,

1. This analysis is limited to the issues raised in defendant's motion. The Court declines to address the extraneous matters discussed during oral argument that were not briefed prior to the parties' hearing.

defendant asserts it is unconstitutional under *Miller* to sentence a juvenile to prison for life without the possibility of parole, even if that juvenile is convicted of homicide. Second, defendant insists that, even if *Miller* does not prohibit this type of punishment, it requires a sentencer to justify its decision with findings on the record.

Defendant's first argument is meritless. In a recent decision, the Supreme Court of Utah considered this issue and concluded that a sentence of life without parole does not violate a juvenile's constitutional rights if he is convicted of homicide. *See State v. Houston*, 2015 UT 40, ¶¶ 52-68, 353 P.3d 55.

Defendant's second argument is unpersuasive. While it is clear "that a sentencer [must] have the ability to consider the mitigating qualities of youth",[2] the current body of binding case law does not require a sentencer to make findings on the record when it imposes a sentence of life without parole on a juvenile who is convicted of homicide. *See generally Miller*, 132 S. Ct. 2455; *see also Houston*, 2015 UT 40 ¶ 32 ("Under Utah's sentencing statute, a juvenile defendant guilty of aggravated murder can be sentenced to either life with the possibility of parole or [without parole]. There [are] no factual findings to be made by a jury, only a determination that [life without parole] would or would not be appropriate.").

2. *Miller*, 132 S. Ct. 2455, 2467 (citation and internal quotation marks omitted).

Appendix C

CONCLUSION

Defendant pleaded guilty to aggravated murder nearly fifteen years ago. During a subsequent sentencing hearing, the Court considered mitigating factors;[3] but ultimately decided to sentence defendant to prison for life without parole. The sentence was in compliance with applicable constitutional law. Defendant's motion to correct an illegal sentence is DENIED.

DATED this 1st day of November, 2016

/s/ Marvin D. Bagley
MARVIN D. BAGLEY,
Judge

3. *See* Transcript of Sentencing, filed May 1, 2002, pp. 5-6 (indicating the Court reviewed defendant's psychological evaluation); *id.* at 30-48 (outlining defendant's recommendation for a lesser sentence); *see also* Provisional Capital Sentencing Evaluation Regarding Mitigation, filed April 26, 2002 (describing several mitigating factors, including defendant's age, upbringing, substance abuse, and mental ability).