No. 126116

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate
	)	Court of Illinois, First District,
Plaintiff-Appellant,	)	No. 1-18-0014
	)	
v.	)	There on Appeal from the Circuit
	)	Court of Cook County, Illinois
DENZAL STEWART,	)	No. 16 CR 60199
	)	
Defendant-Appellee.	)	The Honorable Joseph M. Claps,
	)	Judge Presiding

BRIEF OF *AMICI CURIAE* CHILDREN AND FAMILY JUSTICE CENTER AND JUVENILE LAW CENTER IN SUPPORT OF DEFENDANT-APPELLEE

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IDENTITY AND INTEREST OF AMICI CURIAE

The **Children and Family Justice Center** (CFJC), part of Northwestern Pritzker School of Law's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth, and families, as well as a research and policy center. Currently, clinical staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, and immigration and political asylum. In its 29-year history, the CFJC has served as *amici* in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

Juvenile Law Center advocates for rights, dignity, equity, and opportunity for young people in the child welfare and justice systems through litigation, appellate advocacy, and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting young people advance racial and economic equity and are rooted in research, consistent with the unique developmental characteristics of youth and young adults, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

ARGUMENT

I. PREDICATING CLASS X ELIGIBILITY ON YOUTHFUL OFFENSES IGNORES THE CONSTITUTIONALLY RECOGNIZED DEVELOPMENTAL DIFFERENCES BETWEEN CHILDREN AND ADULTS

Prior to July 2021, offenses committed by youth under age 18 were included in eligibility for Class X Sentencing. 730 ILCS 5/5-4.5-95(b) (West 2019). The Illinois General Assembly has recently amended this statute to exclude offenses committed by any person under age 21. 730 ILCS 5/5-4.5-95(b) (West 2021). However, the prior statutory scheme, under which Denzal Stewart was convicted, contradicts the United States Supreme Court's and Illinois' well-established recognition of the constitutional difference between children and adults by allowing two predicate offenses to serve as the basis for eligibility under Class X adult mandatory sentencing when those offenses occurred when the individual was a child. Juvenile Law Center joins the Office of the State Appellate Defender and the Children and Family Justice Center in asking this Court to exclude offenses committed before age 18 from Class X Offender eligibility.

A. The Fundamental Developmental Differences Between Children And Adults Are Well-Established By The United States Supreme Court And Illinois Courts

Since its decision in *Roper v. Simmons*, the U.S. Supreme Court has recognized that the fundamental developmental differences between children and adults inform how the law treats youth. *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005). The Court acknowledged that what separates children from adults is their "lack of maturity and an underdeveloped sense of responsibility[,]" "impetuous and ill-considered actions and decisions[,]" "that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" and "the character of a juvenile is not as well formed as that of an

adult." *Id.* (first quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993), then citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). Given these characteristics of youth, "any proceeding that involves them, as well as the sanction imposed on children found guilty of crime, should respect these differences." Inter-Am. Comm'n. H.R., *The Situation of Children in the Adult Criminal Justice System in the United States* 63 (2018), http://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf.

Following *Roper,* the U.S. Supreme Court transformed the role that youth and its attendant circumstances play in sentencing children. *Miller v. Alabama*, 567 U.S. 460 (2012). First, *Miller* reaffirmed the understanding that children have diminished culpability for offenses they may commit—no matter how serious the offense—and have greater prospects for reform. *Id.* at 471-72. A child's lesser culpability stems from characteristics unique to adolescents: a lack of maturity, a transient proclivity for recklessness and impulsivity, a vulnerability to peer pressure, and undeveloped personalities. *Id*. Based on these characteristics, youth are "less deserving of the most severe punishments." *Id.* at 471 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)). The *Miller* decision echoed previous Supreme Court cases that emphasized the principle that youth are developmentally different from adults and that these differences are relevant to their constitutional rights. *See*, *e.g.*, *Roper,* 543 U.S. at 578 (holding that imposing the death penalty on individuals convicted as juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment); *Graham*, 560 U.S. at 82 (holding that it is unconstitutional to impose life without parole sentences on juveniles convicted of non-homicide offenses); and *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011) (holding that a child's age must be taken into account for purposes of the *Miranda* custody test).

In reaching these conclusions, the Court relied upon an increasingly settled body of research confirming the distinct emotional, psychological, and neurological attributes of youth that contribute to their immaturity, impetuosity, susceptibility to peer influence, and greater capacity for rehabilitation. *Graham*, 560 U.S. at 68. For instance, adolescents have a diminished ability to perceive potential risks, *J.D.B.*, 564 U.S. at 272, and make appropriate decisions, Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime,* 18 Future Child. 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices."), which is exacerbated by their difficulty in thinking realistically about events that may occur in the future. *See* Brief for the American Psychological Association et al. as Amici Curiae Supporting Petitioners at 11–12, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621). Immaturity is an essential, biological characteristic of childhood, particularly during adolescence.

> [T]he parts of the brain associated with critical thinking, "long-term planning, regulation of emotion, impulse control, and the evaluation of risk and reward continue to mature over the course of adolescence, and perhaps well into young adulthood."

Priscilla A. Ocen, (*E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. Rev. 1586, 1600–01 (2015) (quoting Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 816 (2003)). In fact, there is increasing evidence that "brain development has not reliably reached adult levels of functioning" until the third decade of life. Selen Siringil Perker, Lael E. H. Chester & Vincent Schiraldi, Columbia Justice Lab, *Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approac*h 3 (2019) (quoting Amy Peykoff Hardin, Jesse M. Hackell & Committee On Practice and Ambulatory

Medicine, *Age Limit of Pediatrics*, 140 Pediatrics e20172151 (2017)).

The Illinois judiciary has echoed the findings of the U.S. Supreme Court. In 1899, Illinois established the nation's first juvenile court. *See* Illinois Juvenile Court Act, 1899 Ill. Laws 131. Since, then, Illinois has been a leader in juvenile justice jurisprudence and this Court's holdings have echoed the findings of the United States Supreme Court. In *People v. Holman*, the Illinois Supreme Court concluded that "age is not just a chronological fact but a multifaceted set of attributes that carry constitutional significance." 2017 IL 120655, ¶ 44 (citing *People v. McWilliams*, 348 Ill. 333, 336 (1932), *People v. Miller*, 2020 Ill. 2d328, 341 (2002), and *People v. La Pointe*, 88 Ill. 2d 482, 497 (1981)). The Court emphasized that youth matters in sentencing, and that age and age-related characteristics must be considered as mitigating factors in sentencing youth. *Id.*

B. The Illinois Legislature Has Also Recognized The Constitutional Differences Between Youth and Adults

As set forth above, individuals who are convicted for offenses that occurred before age 18 are less culpable than their adult counterparts and are presumed to have the capacity for rehabilitation. *Miller*, 567 U.S. at 472–74. Yet, Mr. Stewart's youth was not taken into consideration because the state jurisdictional laws required the court to treat him as an adult at age 16. However, since Mr. Stewart's sentencing, the Illinois General Assembly has passed legislation informed by the differences between youth and adults.

1. Age of juvenile court jurisdiction

As early as 2005, the General Assembly considered raising the age of juvenile court jurisdiction to 18. Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction* 13 (2013), https://ijjc.illinois.gov/wp-content/uploads/2021/08/IJJC-Raising-

the-Age-Report.pdf. Proponents argued that 17-year-olds are still maturing and making impulsive decisions; therefore they are still capable of change and rehabilitation. *Id.* In 2010, Illinois raised the general age of juvenile jurisdiction to 18, but only for misdemeanor offenses. *Id.* at 14. This automatically "rout[ed]" youth under the age of 18 who committed felony offenses to the adult criminal court. *Id.* at 10. As such, age was not considered in sentencing. *Id.* at 11.

Shortly after passage of the 2010 change, the Illinois Juvenile Justice Commission began studying and devising recommendations for including felony-charged 17-year-olds under the jurisdiction of the Juvenile Court. Illinois Juvenile Justice Commission, *supra,* at 14. The Commission recognized that the brain of a 17-year-old is still developing and is still "deep into the process of remodeling itself and maturing towards adulthood." *Id.* at 17. The Commission looked to scientific research on adolescent brains, which showed that the "frontal lobes of 17-year-olds are less developed than adults[1]." *Id.* at 18 (citing Elizabeth R. Sowell et. al., *Mapping Cortical Change Across the Human Life Span*, 6 Nature Neuroscience 309, 309 (2003)). Youth instead rely more on the amygdala, an area of the brain associated with strong negative emotions, impulsive and aggressive behaviors, "fight or flight" responses, and the production of rapid protective responses without conscious participation. *Id.* (citing Gargi Talukder, *Decision-Making Is Still a Work in Progress for Teenagers*, Brain Connection (July 2000), Elkhonon Goldberg, *The Executive Brain:*

[1] Frontal lobes are responsible "for making decisions, assessing risk, controlling impulses, making moral judgements, considering future consequences, evaluating reward and punishment, and reacting to positive and negative feedback." Illinois Juvenile Justice Commission, *supra,* at 18 (citing Brief for American Medical Association et al. as Amici Curiae Supporting Respondent at 12, *Roper v. Simmons,* 543 U.S. 551 (2005) (No. 03-633)).

Frontal Lobes and the Civilized Mind 143 (2001), Brief for American Medical Association et al., *supra* note 1, at 12, then quoting Abigail A. Baird et. al*., Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. Am. Acad. Child & Adolescent Psychiatry 1, 1 (1999)). The Commission also recognized the U.S. Supreme Court's determination that adolescents are fundamentally different from adults and that even youth who commit the most serious crimes must be held to a different standard of accountability. *Id.* at 20 (citing *Graham*, 560 U.S. at 66–68).

The Commission ultimately concluded "[b]ecause all 17-year-olds, including those arrested for felony offenses, are less culpable and have a greater chance of rehabilitation than adults, juvenile court jurisdiction should be extended to include all 17-year-olds." Illinois Juvenile Justice Commission, *supra,* at 21. The Commission also noted that: 1) most 17-year-olds stop offending; 2) youth recidivate more in adult court than in juvenile court; 3) raising the age will have long-term economic benefits for Illinois; and 4) including 17-year-olds who commit felonies under juvenile court jurisdiction will be manageable and will not overwhelm the local justice systems as predicted. *Id.* at 21-30, 60. Significantly, the Commission noted the impact of sentencing when youth face felony charges in adult court as opposed to juvenile court. *Id.* at 52. In comparing sentencing for youth charged in juvenile court with those charged in adult court, the Commission noted that, "[c]riminal [c]ourt does not conduct independent investigation of family, social history, or living circumstances (even if 17-year-old is a DCFS ward)," the judge "may sentence defendant to a set term in a county jail" and to a "set term of incarceration in the Illinois Department of Corrections, and that "all adult mandatory minimum sentences and enhancements apply." *Id.* at 52, Table.

Ultimately, the Illinois legislature followed the Commission's recommendations by raising the age of juvenile court jurisdiction in 2014 by amendment to the Juvenile Court Act. *See* 705 ILCS 405/5-120 (West 2014); 705 ILCS 405/5-105 (West 2021). With some exceptions, including first degree murder, aggravated criminal sexual assault and aggravated battery with a firearm, all youth under the age of 18 are now subject to juvenile court jurisdiction. 705 ILCS 405/5-130 (West 2016); 705 ILCS 405/5-120 (West 2014). The General Assembly also removed non-violent offenses, such as residential burglary, from the types of offenses that would exclude youth age 17 from juvenile court jurisdiction. *See* 705 ILCS 405/5-130 (West 2016). The Appellate Court noted that "this amendment provided some indication that the legislature intended to treat minors who commit certain crimes differently from adults charged with those crimes." *People v. Martinez*, 2021 IL App (1st) 182553, ¶¶ 60, 63 (citing *People v. Miles,* 2020 IL App (1st) 180736, ¶ 21 and *People v. Williams,* 2020 Il App (1st) 190414 ¶ 20) (finding that defendant's robbery conviction, which occurred while he was a juvenile, cannot serve as a predicate offense for Class X sentencing). Additionally, despite initial concerns that raising the age would overwhelm the system and increase the financial impact, stakeholders saw a decrease in juvenile crime after raising the age. Justice Policy Institute, *Raising the Age: Shifting to a Safer and More Effective Juvenile Justice System* 42-43 (2017), https://justicepolicy.org/wp-content/uploads/2021/06/raisetheage.fullreport.pdf.

Here, Denzal Stewart's offense at age 17, for which he was convicted in adult court, occurred in 2013, one year before the Juvenile Court Act was amended. *People v. Stewart*, 2020 IL App (1st) 180014-U, ¶ 26. Although this was Mr. Stewart's first offense, juvenile court jurisdiction ended at age 16 at the time of his offense and therefore he

automatically fell under adult court jurisdiction. Because today Mr. Stewart's 2013 offense would not be subject to criminal court jurisdiction, it should not now be included as a qualifying offense for Class X sentencing.

2. Class X felony eligibility

The State based Mr. Stewart's Class X eligibility on the version of the statute then in effect. At that time, prior offenses qualified under the statute so long as the first felony was committed after 1978, the second was committed after conviction of the first, and the third was committed after conviction of the second. *See* 730 ILCS 5/5-4.5-95(b) (West 2016). As outlined above, Illinois has since recognized the constitutionally significant difference between offenses committed by youth age 17 or younger and those of adults. This is evident in a revision of the Class X statute, effective July 2021, which now requires that "the first offense was committed when the person was 21 years of age or older." 730 ILCS 5/5-4.5-95(b)(4) (West 2021). With this change, the General Assembly established that offenses committed by youth should not serve as a qualifying offense under the Class X Felony Statute.

Given the clear legislative stance, the use of mandatory punishments in the adult system for youthful predicate offenses contravenes this Court's and the Illinois Legislature's longstanding commitment to ensuring the law reflects the differences between youth and adults. The U.S. Supreme Court, the Illinois Legislature, and science alike recognize that youth at age 17 do not have the mental capability to make decisions as adults. The General Assembly now agrees that today a 17-year-old, like Mr. Stewart was at the time, would be subject to juvenile court jurisdiction for residential burglary. Given the evolution of juvenile sentencing, it is inapposite to permit courts to pile on excessive

adult penalties on youth for an offense that is now handled in the juvenile court system, a system whose goal is to rehabilitate and not punish.

II. THE CLASS X FELONY STATUTE HAS A DISPROPORTIONATE EFFECT ON BLACK AND BROWN YOUTH

Eliminating youthful offenses from Class X sentencing eligibility would also address the disproportionate effects that those sentencing schemes have on Black and Brown youth in Illinois through the disparate rates that Black and Brown children are transferred to adult court. Studies have shown that "automatic transfer[s] disproportionately affect[] children of color." Juvenile Justice Initiative, *Automatic Adult Prosecution of Children in Cook County*, Illinois, 2010-2012 11 (2014), https://jjustice.org/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf. Indeed, prior to the 2014 amendment of the Juvenile Justice Act, Black and Brown youth were disproportionately excluded from juvenile court jurisdiction. *Id*. This disproportionality is consistent with national data. At every stage of the criminal justice system, from interrogation through arrest, prosecution and plea negotiation, trial, and sentencing, people of color—particularly Black males—are treated more harshly than white individuals. *See*, *e.g*., Marc Mauer, *Addressing Racial Disparities in Incarceration*, 91 Prison J. 87S, 91S-95S (2011). Black children are more likely to be prosecuted as adults and incarcerated with adults. Nationally, Black youth comprise 14% of the general population, but 47.3% of the youth transferred to adult court by juvenile court judges. Jeree Michele Thomas & Mel Wilson, Nat'l Ass'n of Social Workers, *The Color of Juvenile Transfer: Policy & Practice Recommendations* 1 (2017), https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0. The greater number of Black youth tried in the adult criminal justice system results in the systematic, long-term

incarceration of thousands of Black youth. Given that Black and Brown youth enter the adult criminal justice system at a rate higher than their peers, the former Class X Offender Statute, which automatically imposed adult punishments on individuals convicted of youthful offenses, contributes to this racial disparity. In fact, a 2020 report studying data from 2017 found that Black and Brown youth continue to be transferred to the adult court at disproportionate rates. *See* Illinois Juvenile Justice Commission, *Trial and Sentencing of Youth as Adults in the Illinois Justice System: Transfer Data Report* 9 (2020), https://ijjc.illinois.gov/wp-content/uploads/2021/08/IJJC-Trial-and-Sentencing-of-Youth-as-Adults-in-the-Illinois-Justice-System-Transfer-Data-Report-Calendar-Year-2017_0.pdf) (showing that the majority of youth (51%) transferred to adult court were Black/African American); *see also Automatic Adult Trial of Youth in Cook County, Illinois, 2010-2012: What Happens to Youth Tried as Adults?*, Juvenile Justice Initiative, https://jjustice.org/wp-content/uploads/Automatic-Transfer-Infographics.pdf (showing that between 2010-2012 only 1 out of the 257 youth automatically transferred to adult court in Cook County was white).

These disparities are a result of policies and practices, implicit biases, and the structural disadvantage of communities of color. *See*, *e.g.*, John R. Mills, Anna M. Dorn & Amelia Courtney Hritz, *Juvenile Life Without Parole in Law and Practice: Chronicling the Rapid Change Underway*, 65 Am. U. L. Rev. 535, 584–85 (2016) ("racially biased political appeals played an important role in creating the climate that led to the enactment of . . . legislation" that increased the criminalization of Black youth (quoting Sara Sun Beale, *You've Come a Long Way, Baby: Two Waves of Juvenile Justice Reforms from Jena, Louisiana,* 44 Hav. C.R.-C.L. L. Rev. 511, 514 (2009))); The Sent'g Project, *Report of the*

Sentencing Project to the United Nations Human Rights Committee: Regarding Racial Disparities in the United States Criminal Justice System 3-6 (2013) (citing Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 Law & Hum. Behav. 483, 485 (2004)), https://www.sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf; Lauren Krivo & Ruth Peterson, *Extremely Disadvantaged Neighborhoods and Urban Crime*, 75 Soc. F. 619, 642 (1996) (discussing arrest rates); Michael Siegel et al., *The Relationship between Racial Residential Segregation and Black-White Disparities in Fatal Police Shootings at the City Level, 2013-2017*, 111 J. Nat'l Med. Ass'n 580, 585–86 (2019) (discussing effect of neighborhood segregation on racial disparities in police shootings); Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 Am. U. L. Rev. 1513, 1554–56 (2018) (citing Ronald Weitzer & Rod K. Brunson, *Strategic Responses to the Police among Inner-City Youth*, 50 Socio. Q. 235, 235–36 (2009)) (Black youth experience extensive surveillance and harmful police encounters, including constant police presence and frequent pedestrian or vehicle stops); Patricia Foxen, *Perspectives from the Latino Community on Policing and Body Worn Cameras*, Medium (May 4, 2017), https://medium.com/equal-future/perspectives-from-the-latino-community-on-policing-and-body-worn-cameras-47f150f71448 (documenting reactions to the hyper-policing of Latino communities).

In a press release issued on June 22, 2020, the Illinois Supreme Court recognized the disproportionate impact that the application of certain laws, rules, policies, and practices had and continue to have on Black and Brown people in Illinois and nationally. *See Supreme Court Releases Statement of Racial Justice, Next Steps for Judicial Branch*,

Supreme Court of Illinois (June 22, 2020), https://perma.cc/5CXM-UYKV. The Court noted "[r]acism exists, whether it be actualized as individual racism, institutional racism or structural racism, and it undermines our democracy, the fair and equitable administration of justice, and severely diminishes individual constitutional protections and safeguards" of citizenship, rights, and the sacred benefits of all. *Id.* Black and Brown people should not have a diminished expectation of fairness, equity, and freedom from racial discrimination, yet they "are continually confronted with racial injustices that the Courts have the ability to nullify and set right." *Id.* The Illinois Supreme Court reiterated that: "Where frailties in the disposition of justice exist, we will recognize and acknowledge them and seek to rectify any injustice." *Id.* This Court can put action to its words by ensuring that the application of Illinois laws does not continue to be disproportionately levied against Black and Brown children.

CONCLUSION

For the foregoing reasons, we urge this Court to affirm the Appellate Court's decision and conclude that prior offenses committed when Defendant was 17 years old can no longer satisfy a conviction under the Class X Sentencing Scheme.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 13 pages.

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