STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

KENYA ALI HYATT,

Defendant-Appellee.

Case No. 13-032654-FC
CofA#: 325741
SCt#s: 153081

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DEFENDANT-APPELLEE'S ANSWER TO AMENDED APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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STATEMENT OF QUESTION PRESENTED

I. SHOULD THE COURT REVERSE THE DECISION OF THE HYATT CONFLICT PANEL, NOT FOR THE REASONS SUGGESTED BY PLAINTIFF, BUT BECAUSE IT IS AT ODDS WITH UNITED STATES SUPREME COURT PRECEDENT AND THE MICHIGAN CONSTITUTION THAT PROHIBITS "CRUEL OR UNUSUAL PUNISHMENT"?

Defendant-Appellee says "yes."

Plaintiff-Appellant says "no."

The Court of Appeals says "no."

The trial court says "no."

STATEMENT OF FACTS

Defendant-Appellee Kenya Ali Hyatt, 17-years old at the time of the offense, was charged with Felony Murder; Conspiracy To Commit Armed Robbery; Armed Robbery; and Felony Firearm. ("Information Felony," 3/27/13.) Defendant was charged with two others—Co-Defendants Aaron Williams and Floyd Perkins. William was 29-years old when the offense occurred, and Perkins was 19-years old at the time of the offense.

At least initially, Co-Defendant Perkins pled guilty on the date set for trial to Second-Degree Murder and Felony Firearm. (Transcript, "Plea," case number 13-32653-FC, p 4, 12/5/13.) The case involves the fatal shooting of John Andrew Mick on August 14, 2010. (Id., p 6.) In exchange for Perkins' plea, the prosecution agreed to dismiss Conspiracy To Commit Armed Robbery; Armed Robbery. (Id., p 4.) As part of the plea, Perkins was to provide truthful testimony against the Co-Defendants. (Id.)

As part of the factual basis for Perkins' plea, he admitted to being with Defendant and Williams; that Mick was working security; that they knew Mick had a firearm; that they decided to get the firearm from Mick; that he and Defendant approached Mick, with Defendant being armed; that Williams was acting drunk so that Mick would get out of his vehicle; that Defendant pulled the gun out; Mick grabbed the gun; and that Defendant "let off a shot towards the chest area of Mr. Mick." (Id., pp 12-19.) Perkins acknowledged that Mick

was shot four times, and that Perkins grabbed Mick's gun after the first shot and ran away. (Id., pp 19-20.)

Dr. Allecia Wilson testified at trial as an expert in forensic pathology. (Transcript, "Jury Trial," pp 133-35, 6/24/14.) She mentioned the cause of death was multiple gunshot wounds, and the manner of death was homicide. (Id., p 141.)

After a multi-day trial, the jury returned a verdict of guilty of First-Degree Murder; Conspiracy To Commit Armed Robbery; Armed Robbery; and Felony Firearm. (Transcript, "Trial Volume IX," pp 5-6, 6/30/14.)

Due to the juvenile age of Defendant, the court held sentencing hearings pursuant to Miller v Alabama, 567 US ___; 132 S Ct 2455; 183 L Ed 2d 407 (2012). (Transcript, "Pretrial," p 3, 10/3/14.)

The court heard from Officer Terrance Green, Dr. Noelle Clark, Defendant's father, and Defendant. (Transcript, "Miller Hearing," 11/21/14.) Officer Green admitted that Defendant said that the goal was to get a firearm from a security guard; that no one was supposed to get hurt; that the first shot was accidental; and that he blacked out thereafter. (Id., pp 10-11.) Green mentioned Defendant said he did not think the gun was loaded. (Id., p 14.) The other persons involved, Aaron Williams and Floyd Perkins, were older than Defendant, and that it was Perkins' idea to get the gun. (Id., pp 18-19.)

Dr. Noelle Clark testified as an expert in Psychology; that he performed a psychological evaluation upon Defendant; that Defendant had a below average IQ; and that his testing scores revealed "a seriously disturbed young man . . . . with serious maladjustment." (Id., pp 27-34.) It was reported that Defendant's father was shot three times in the back, paralyzing him, and that Defendant took responsibility for the attack. (Id., pp 39-40.) Dr. Clark reported that shortly after his father becoming paralyzed, Defendant moved out of the house, bounced around among different relatives, and considered himself homeless. (Id., p 41.)

It was reported that Defendant was high on crack cocaine when the murder occurred. (Id., p 42.) Dr. Clark described Defendant's family as being dysfunctional. (Id., p 43.) He opined that **Defendant has the capacity to be rehabilitated**. (Id., p 44.) Dr. Clark mentioned Defendant was "impressionable" and "easily led." (Id., p 48.) He described Defendant as being a "sensitive, compassionate young man," who was disconnected from social morals. (Id., p 51.)

Defendant's father, Kenya Hyatt, Sr., testified that Defendant was born out of wedlock, and that Defendant had a learning disability. (Id., pp 59 and 70.)

Defendant testified that he does not recall shooting Mr. Mick; that the rifle went off accidentally; that he does not recall how he came in possession of

the gun; and that he was high on crack cocaine. (Id., pp 101-02.) **Defendant stated he had asked for forgiveness**. (Id., p 103.) He mentioned he was 13-years old during the shooting of his father, and he had eight to ten guns pointed at him in the backroom when that incident occurred. (Id., p 111.) Defendant mentioned had he followed his father's instruction of not letting anyone in the house, his father may not have gotten shot—and that Defendant often thinks about this. (Id., p 115.)

Defendant's sentencing was held on December 29, 2014, where he asked for forgiveness. (Transcript, "Sentence," pp 16-17, 12/29/14.) Despite the testimony from the expert, Defendant's father, and Defendant, the court determined to sentence Defendant to life without parole on the First-Degree Murder conviction. (Id., pp 17-19.)

Defendant requested the appointment of appellate counsel on January 14, 2015. ("Claim Of Appeal And Order Appointing Counsel," 1/27/15.) Appellate counsel was appointed on January 27, 2015. (Id.)

In a published opinion, the Court of Appeals affirmed the convictions but remanded for resentencing as to Defendant pursuant to People v Skinner, ___ Mich App ___ (2015). (Court of Appeals' For Publication Opinion, docket number 325741, 1/19/16.) The Court indicated its reluctance in remanding for resentencing, stating "were it not for Skinner, we could affirm the sentencing court's decision to sentence Hyatt to life imprisonment without

the possibility of parole. We therefore declare a conflict with Skinner pursuant to MCR 7.215(J)(2)." Id.

On January 25, 2016, the United States Supreme Court held that its previous ruling in Miller v. Alabama, 567 U.S. ___ (2012), that a mandatory life sentence without parole should not apply to juveniles convicted of murder, should be applied retroactively. Montgomery v Louisiana, ___ US ___; 136 S Ct 718; 193 L Ed 599 (2016).

On January 27, 2016, the prosecution filed an application for leave to appeal. ("Plaintiff-Appellant's Application For Leave To Appeal," 1/27/16.) Within its application, the prosecution raises two issues: First, the statute at issue in the present case for juvenile sentences on life without parole offenses, MCL 769.25, is consistent with the Sixth Amendment and is consistent with Miller v Alabama, 576 US ___; 132 S Ct 2455; 183 L Ed 2d 407 (2012). (Id.) Secondly, the prosecution argues that Skinner was wrongly decided and should be overruled. (Id.)

On February 12, 2016, a conflict panel was ordered, and after brief and oral argument, issued its decision on July 21, 2016 by following Skinner and determining that a judge, not a jury, is to determine whether a juvenile should receive life without parole. People v Hyatt, ___ Mich App ___ (2016). The Court, however, remanded the case to the trial court for resentencing. The Court stated: "On resentencing, the court is to implement the directives of

Miller and Montgomery and be mindful that those cases caution against the imposition of a life-without-parole sentence except in the rarest of circumstances." Id.

Defendant submits in this answer that Plaintiff's application and amended application for leave should be denied, and a remand for resentencing is the proper course of action.

ARGUMENT

Defendant-Appellee Kenya Ali Hyatt submits a resentencing is necessary. First, MCL 769.25 does not conform to the mandates of the Sixth Amendment. And, secondly, People v Skinner, ___ Mich App ___ (2015) was correctly decided and Defendant's sentence of life without parole was unconstitutional and inappropriate for this juvenile. After once considers (and renounces) the linguistic gymnastics Plaintiff uses in support of its argument, the final conclusion should be that the Court of Appeals' conflict panel wrongly determined a judge, not a jury, is to make the determination if a sentence of life without parole is appropriate. Plaintiff attempts to make certain fine distinctions because it cannot overcome the Michigan Constitution prohibition against "cruel or unusual punishment." See, Const 1963, Art 1, §16.

After all is said and done, Defendant suggests that the Sixth Amendment analysis will be rendered moot by this Court decision finding of a life without parole sentence for a juvenile to be "cruel or unusual."

I. THE COURT SHOULD REVERSE THE DECISION OF THE HYATT CONFLICT PANEL, NOT FOR THE REASONS SUGGESTED BY PLAINTIFF, BUT BECAUSE IT IS AT ODDS WITH UNITED STATES SUPREME COURT PRECEDENT AND THE MICHIGAN CONSTITUTION THAT PROHIBITS "CRUEL OR UNUSUAL PUNISHMENT"

Defendant-Appellee Kenya Ali Hyatt should not have been sentenced to life without parole. First, the court engaged in unconstitutional judicial fact-finding when sentencing Defendant to life without parole. See, People v Skinner, ___ Mich App ___ (2015). Secondly, the trial court failed to properly apply the factors set forth in Miller v Alabama, 567 US ___; 132 S Ct 2455, 2468; 183 L Ed 2d 407 (2012).

This Court applies de novo review to matters of constitutional law. People v Harper, 479 Mich 599, 610; 739 NW2d 523 (2007).

A. Judicial Fact-Finding To Increase The Sentence Was Unconstitutional

Defendant is entitled to a jury determination of any and all facts that subject him to the increased sentence of life without parole.

First, the United States Supreme Court law supports Defendant's right to a jury trial at his sentencing hearing. Three cases in particular support this position: Apprendi v New Jersey, 530 US 466, 490, 120 S Ct 2348, 147 L Ed 2d 435 (2000); Ring v Arizona, 536 US 584, 122 S Ct 2428; 153 L Ed 2d 556

(2002); and Alleyne v United States, 530 US 466; 133 S Ct 2151;186 L Ed 2d 314 (2013).

In Apprendi, the US Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." See also Blakely v Washington, 542 US 296, 303; 124 S Ct 2531; 159 L Ed 2d 403 (2004) ("statutory maximum" for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.). As summarized by the Court: "If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact – no matter how the State labels it—must be found by a jury beyond a reasonable doubt." Apprendi, supra at 482-83.

In Ring, supra, the Court applied Apprendi in the context of a death penalty case. In that case, the defendant could not be given the ultimate sentence – death – unless further findings were made. Ring, supra at 592. The Court found unconstitutional the Arizona statute, which allowed a judge to find the aggravator factor(s) needed to expose the defendant to the death penalty and held that the defendant was entitled under the Sixth Amendment to a jury determination of the facts necessary to increase the possible penalty to death.

In reaching its decision, the Court noted the foundational importance of jury fact finding in homicide cases, even at the time of the passage of the Sixth Amendment. Ring, supra at 599. In comparing Ring to Apprendi, the Court noted that the right to a jury trial "would be senselessly diminished" if it required fact finding for a two year increase in a sentence, "but not the fact-finding necessary to put him to death." Ring, supra at 609.

In Alleyne v United States, the Court extended Apprendi's rule, and found that "[w]hen a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury." Alleyne, 530 US 466 133 S Ct 2151, 2162; 186 L Ed 2d 314 (2013). In Alleyne, the Court applied this rule to a mandatory minimum penalty, and found that facts essential to the mandatory minimum must, under the Sixth Amendment, be proven to a jury beyond a reasonable doubt.

In the present case, Defendant challenged the constitutionality under the Sixth Amendment of MCL 769.25, which permits judges to make factual findings which increase the punishment. Based on judicial fact-finding, the trial court determined a sentence of life without parole was the appropriate sentence. Most recently, however, the Michigan Supreme Court, relying on Federal precedent has held judicial fact-finding to increase a sentence is unconstitutional. See, People v Lockridge, ___ Mich ___ (2015). The Court in

Lockridge, however, did not address issues of juvenile sentences of life without parole since such sentences were not "at issue." The case of People v Skinner, ___ Mich App ___ (2015), decided shortly after Lockridge, did decide the issue.

The Court of Appeals issued a published opinion on August 25, 2015 in People v Skinner, ___ Mich App ___; ___ NW2d ___ (Docket No. 317892)(2015). The Court in Skinner provides a detailed analysis of the seminal case of Miller and applies it to the statutory procedure in MCL 769.25. Further, the Court uses Lockridge as additional support for its decision.

The Skinner Court reviewed cases leading up to Miller—the case that ultimately determined mandatory life sentences without the possibility of parole for juvenile offenders violated the Eighth Amendment. Miller, 132 S Ct at 2460. The Miller Court notes that only "the rare juvenile offender whose crime reflects irreparable corruption" should receive the maximum sentence of life without parole. Thereafter, the Skinner Court analyzed MCL 769.25, and struck it down as being unconstitutional.

The Skinner Court determined that "at the point of conviction, absent a motion by the prosecution and without additional findings on the Miller factors, the maximum punishment that a trial court may impose upon a juvenile convicted of first-degree murder is a term-of-years prison sentence. See Blakely[v Washington, 542 US 296, 303; 124 S Ct 2531; 159 L Ed 2d 403

(2004)](holding that for purposes of Apprendi[v New Jersey, 530 US 466, 477; 120S Ct 2348; 147 L Ed 2d 435 (2000)] the "statutory maximum" "is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings.") Thus, following her jury conviction, defendant was subject to a term-of-years prison sentence."

Applying Miller, therefore, that the default sentence for a juvenile convicted of First-Degree Murder is a term-of-years sentence. The Skinner Court concluded its analysis by stating: "other than a prior conviction, **any fact** that increases either the floor or the ceiling of a criminal defendant's sentence beyond that which a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by defendant," must be submitted to a jury and proved beyond a reasonable doubt. (Emphasis in original; internal quotes omitted.)

With the above review, it is easy to determine MCL 769.25 is unconstitutional. The statute relies upon judicial fact-finding when imposing the ultimate sentence of life without parole for juvenile offenders. A result the Skinner Court rightly found MCL 769.25 repugnant to the Sixth Amendment of the United States Constitution. The Skinner Court correctly reported that "if as the state and the Attorney General contend, the 'maximum allowable punishment' is life without parole at the point of defendant's conviction, then that sentence would offend the constitution. Under Miller, a mandatory default

sentence for juveniles cannot be life imprisonment without the possibility of parole." This being the case, the judicial fact-finding necessary for a juvenile sentence of life without parole violates the Sixth Amendment.

With the above being said and pursuant to Skinner, this case must be remanded to the trial court where the following procedure is followed:

> [F]ollowing a conviction of first-degree murder and a motion by the prosecuting attorney for a life without parole sentence, absent defendant's waiver, the court should impanel a jury and hold a sentencing hearing where the prosecution is tasked with proving that the factors in Miller support that the juvenile's offense reflects "irreparable corruption" beyond a reasonable doubt. During this hearing, both sides must be afforded the opportunity to present relevant evidence and each victim must be afforded the opportunity to offer testimony in accord with MCL 769.25(8). Following the close of proofs, the trial court should instruct the jury that it must consider, whether in light of the factors set forth in Miller and any other relevant evidence, the defendant's offense reflects irreparable corruption beyond a reasonable doubt sufficient to impose a sentence of life without parole. Alternatively, if the jury decides this question in the negative, then the court should use its discretion to sentence the juvenile to a term-of-years in accord with MCL 769.25(9). Skinner, slip opinion at 23.

For the above reasons, the trial court sentence of life without parole was unconstitutional. The trial court engaged in inappropriate fact-finding to justify the sentence.

B. The Trial Court Failed To Properly Apply The Miller Factors

The United States Supreme Court's decision in Miller v Alabama, 567 US ___;132 S Ct 2455, 2468; 183 L Ed 2d 407 (2012) was not properly applied to the facts of Defendant's case. The Miller Court's decision provides the

underlying Eighth Amendment right, but the Court's frequent comparisons of life without parole for juveniles to the death penalty helps underline the applicability of Ring, supra, and the Court's other Sixth Amendment cases. In Miller v Alabama, the Court banned the mandatory imposition of life without parole on youths who were under 18 at the time of the offense. Miller, supra.

In reaching its holding, the Court drew on two lines of precedent. Id. at 2464. First, the Court drew on cases that imposed categorical bans on a class of offenders based on their lesser culpability and the severity of the penalty. The Court drew on Graham v Florida, 560 US __; 130 S Ct 2011, 2030; 176 L Ed 2d 825 (2010), which found life without parole unconstitutional for juveniles for a nonhomicide offense and required that these offenders have a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," and Roper v Simmons, 543 US 551, 125 S Ct 1183, 161 L Ed 2d 1 (2005), which banned the death penalty for juveniles.

The Court's cases "establish that children are constitutionally different from adults for purposes of sentencing" and that laws that fail to take into account this difference are "flawed." Miller, supra at 2465 (citing Graham, 130 SCt at 2031). "[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. The Court further observed that "the science and social science supporting Roper's and Graham's conclusions

[regarding the diminished culpability of youth] have become even stronger. Miller, 132 S Ct at 2464, fn 5. The Court explained that children lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking." Miller, 132 S Ct at 2464 (quotations omitted). The Court also explained these neurological differences make children "more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their environment and lack the ability to extricate themselves from horrific, crime-producing settings." Id. (quotations omitted). Finally, "a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievabl[e] deprav[ity]." Id. (quotations omitted).

The Miller Court also drew on its line of cases banning mandatory imposition of the death penalty and requiring that the sentencer consider the individual defendant and his offense in death penalty cases. Miller, 132 S Ct at 2464, 2467. The Court, as it did in Graham, likened juvenile life without parole to the death penalty and noted its particular harshness when imposed on children. Miller, 132 S Ct at 2466. In these cases, the sentencer must be able to consider mitigating factors so that the most severe punishment is only given to the "most culpable defendants committing the most serious offenses." Miller, 132 S Ct at 2467.

Mandatory life without parole, the Court said, improperly "precludes consideration of [the defendant's] chronological age and its hallmark features, . . .including immaturity, impetuosity, and failure to appreciate risks and consequences." Id. at 2468. The Court continued:

> Mandatory life without parole "prevents taking into account the family and home environment that surrounds [the defendant] – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of [] participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." [Id.]

The Court emphasized that the sentencer must take into account how children are different and "how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id.

In response to Miller, in MCL 769.25, our state legislature set up a system for sentencing juveniles convicted of first-degree murder in which, unless the prosecution acted and sought an enhanced penalty, the juvenile would be exposed to a term-of-years sentence. The law provides that only if the prosecutor files a timely motion seeking the greater sentence of life without parole is that greater sentence even a possibility. MCL 769.25(3)(requirement of prosecution motion); MCL 769.25(4)(default sentence if no prosecution motion). The prosecution's motion "shall specify the grounds on which the

prosecuting attorney is requesting the court to impose a sentence of imprisonment for life without the possibility of parole." MCL 769.25(3).

In People v Carp, 496 Mich 440, 527-528; 852 NW2d 801 (2014). our state Supreme Court emphasized that the term of years sentence is the "default" sentence that is to be given. The Court stated:

> Rather than imposing fixed sentences of life without parole on all defendants convicted of violating MCL 750.316, MCL 769.25 now establishes a default sentencing range for individuals who commit first-degree murder before turning 18 years of age. Pursuant to the new law, absent a motion by the prosecutor seeking a sentence of life without parole, 'the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.'" (citing to MCL 769.25(4)and (9)).

Additionally in Carp, supra, the Michigan Supreme Court indicated that the question of whether defendants were entitled to a jury determination under Miller, supra, and Alleyne, supra, was not raised before the Court and, therefore, not decided. Carp, supra at 491, n.20 ("As none of the defendants before this Court asserts that his sentence is deficient because it was not the product of a jury determination, we find it unnecessary to further opine on this issue and leave it to another day to determine whether the individualized sentencing procedures required by Miller must be performed by a jury in light of Alleyne.").

In a bold refutation of Michigan Supreme Court precedent noted in Carp, the Court of Appeals in the present case mentions the "default" sentence stated in Carp really does not mean a "default." The Court of Appeals mentions: "While our Supreme Court in Carp mentioned the term "default," the language of § 25(4) only divests the sentencing court of the discretion to impose a sentence other than the term of years "[i]f the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for" in § 25(3)." People v Hyatt, ___ Mich App ___; ___ NW2d ___ (Docket No. 325741)(2016). Therefore, the Court reasons, "the remainder of MCL 769.25 neither expressly provides nor reasonably suggests that the sentencing court should apply any default sentence." Id. , slip op. page 21. The Court of Appeals' analysis in the present case is simply wrong; does not conform to United States Supreme Court precedent; does not conform to Michigan Supreme Court precedent; and is not consistent with the Sixth Amendment.

Defendant is entitled to a jury determination of any and all facts that increase his sentence from the "default" term of years' sentence for juveniles to the "unusual" sentence of life without the possibility of parole, in light of Apprendi, Ring, Alleyne, and Miller, and MCL 769.25. The only facts found beyond a reasonable doubt in this case are that Defendant caused the death of John Mick, with a gun and that the killing was during the commission of a robbery. These facts alone do not make Defendant's case "unusual" or "rare"

among other murder cases committed by juveniles, as both Miller and MCL 769.25 require for the imposition of a life without parole sentence.

MCL 769.25 requires both that the prosecution provide notice that it intends to seek a sentence of life without parole with specific grounds, MCL 769.25(3), and it requires that the judge make factual findings relating to "aggravating" factors used by the court in imposing a sentence, MCL 769.25(7). Short of proving and finding these facts, the youth is entitled to the default term-of-years sentence.

In this case, the prosecution indicated that it was seeking life without parole, instead of the default term-of-years sentence. Further, if this Court considers the imposition of the sentence of life without parole, it must specify, on the record, the aggravating circumstances in this case. As argued above, any and all of the factual determinations which are alleged to aggravate Defendant's crime and which could subject him to a greater possible punishment of life without parole must, under the Sixth Amendment, be proven beyond a reasonable doubt to a jury. These factual findings "alter[] the legally prescribed punishment so as to aggravate it" and, as dictated by Apprendi, Ring, and Alleyne, "the fact necessarily forms a constituent part of a new offense and must be submitted to the jury." Alleyne, supra at 2162. Nevertheless, if the court determines fact-finding by a jury on a "beyond a reasonable doubt

standard is unnecessary, this Court should still vacate the life without parole sentence since there is a lack of aggravating factors to justify such a sentence.

The record before this Court demonstrates that Defendant is less culpable than a mature adult who committed the same offenses would be, because his crimes reflect the impulsivity, impetuosity, and lack of judgment that is characteristic of the adolescent maturity mismatch experienced by youths. Further, his criminal behavior began and escalated in the context of a traumatic and unstable childhood. Defendant took responsibility for his father being paralyzed when being attacked. (Transcript, "Miller Hearing," pp 27-41, 11/21/14.)

Defendant was told by his father not to let anyone in the house; he disobeyed the order; was assaulted; and when his father came home, his father was shot three times, leaving him paralyzed. (Id.) Thereafter, Defendant bounced around family member's homes, and considered himself homeless.

Defendant was involved in the present offense due to two older family members and/or acquaintances. Defendant was described as "impressionable" and "easily led," and "a seriously disturbed young man . . . . with serious maladjustment." (Id., pp 27-34 and 48.) The expert opined there was hope for Defendant, stating he could be rehabilitated. (Id., p 44.) Dr. Clark described Defendant as being a "sensitive, compassionate young man." (Id., p 51.)

On this record, there is no basis to conclude that Defendant is beyond rehabilitation or that his offense reflects "irreparable corruption." See, Miller. Therefore, the sentence of life without parole was inappropriate.

After the Court of Appeals issued its decision in the present case on January 19, 2016, the United States Supreme Court issued its decision in Montgomery v Louisiana, ___ US ___; 136 S Ct 718; 193 L Ed 599 (2016), holding in unmistakably strong language that Miller applies retroactively.

The conflict panel in the present case, recognizes Montgomery's indisputable acknowledgement that youth matters and it is only the rare juvenile who should be sentenced to life without parole. Therefore, a remand for resentencing was appropriate (albeit for different reasons as stated above). Regardless, however, this Court has allowed Defendant to amend his application for leave to appeal. Defendant will address, as alluded to above, how the Sixth Amendment issue should be rendered moot if the Court looks to our Michigan Constitution and finds life without parole for a juvenile is "cruel or unusual punishment" pursuant to Const 1963, Art 1, §16.

CONCLUSION

Defendant-Appellee Kenya Ali Hyatt respectfully requests that this Honorable Court to deny Plaintiff's application for leave to appeal. The sentence of life without parole was unconstitutional and inappropriate for this juvenile and a resentencing proceeding is in order.

Respectfully submitted,

Dated: October 5, 2016

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PROOF OF SERVICE

I, Ronald D. Ambrose, attorney for Defendant-Appellee Kenya Ali Hyatt, certify that on October 5, 2016 I served through first class mail, postage fully prepaid, a copy of the following documents upon counsel for Plaintiff-Appellant, Joseph F. Sawka, addressed to Genesee County Prosecutor's Office, 900 S. Saginaw Street, Flint, MI 48502: 1) Defendant-Appellee's Answer To Amended Application For Leave To Appeal.

Dated: October 5, 2016

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