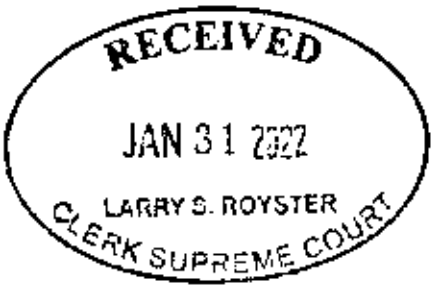
STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

v

JOHN ANTONIO POOLE
Defendant-Appellant

SC 161529
COA 352269



Layman Brief

BRIEF AMICUS CURIAE

This brief was fashioned and submitted without the assistance of an attorney. Amici, Michael Graham #202845, is a prisoner confined at the Saginaw Correctional Facility. He submits this brief in hopes that it will assist the court in its determination as to (1) whether the defendant's successive motion for relief from judgment is based on a retroactive change in law, MCR 6.502 (G)(2), where the law relied upon does not automatically entitle him to relief; and (2) if so, whether the United States Supreme Court in Miller v Alabama, 567 US 460 (2012) and Montgomery v Louisiana, 136 SCT 718 (2016), should be applied to 19 year olds defendants convicted of murder and sentenced to mandatory life without the possibility of parole, under the Eighth Amendment to the United States Constitution or Mich const. 1963, art 1 & 16 or both.

Amici contends that defendant Poole's successive relief from judgmnet motion is based on a retroactive change in the law. MCR 6.502 (G)(2). See Montgomery v Louisiana which held that Miller v Alabama establishes a new substansive rule that applies retroactively on collataral review.

The plaintiff likely will agree that Miller does apply retroactively. But will however, argue that Miller does not apply to the defendant because Miller had drawn the line at 18 year olds. Miller actually held that "The Eighth Amendment forbids a sentencing scheme that that mandates life in prison without

the possibility of parole for juvenile offenders". Nothing in Miller states or suggests that courts are prevented from finding that the Eighth Amenment prohibits mandatory life without parole for those 19 years old. Therefore, it is up to this court to make its own determination as to who is considered a juvenile.

In Cruz v United States 2018 U.S. Dist LEXIS 52924 the court extended Miller to the defendant who was 18 years old during the time of the offense. The court relied heavily on the testimony of Professor Laurence Steinberg, whose prior research in adolescent brain development led the Miller court to rule it unconstitutional to sentence those 17 and younger to mandatory life.

In Cruz, it was quoted that "The court does not infer by negative implication that the *Miller Court also held that mandatory life without parole is necessarily constitutional as long as it is applied to those over the age of 18. The Miller opinion contains no statement to that effect. Indeed, the Government recognizes that, "The Miller Court did not say anything about exceptions for adolescents, young adults, or anyone else unless younger than 18". Nothing in Miller then states or even suggests that courts are prevented from finding that the Eighth Amendment prohibits mandatory life without parole for those over the age of 18. Doing so would rely on and apply the rule in Miller to a different set of facts not contemplated by the case, but it would not be contrary to that precedent.

Such a reading of Miller is consistent with the Supreme Court's traditional "reluctance to decide constitutional questions unnecessarily." See Bowen v United States 422 US 916, 920. In Miller it was unnecessary for the Courts to address the constitutionality of mandatory life imprisonment for those over the age of 18 because both defendants in Miller were 14 years old. Therefore, the question of whether mandatory life imprisonment without parole is constitutional

for a 19 year old was not before the Court in Miller, and it would be contrary to the Court's general practice to opine on the question unnecessarily.

In drawing the line at 18, then, Roper, Graham and Miller drew lines similar to that in Thompson, protecting offenders that fall under the line while remaining silent as to offenders that fall above the line. In the case of mandatory life imprisonment without perole, no Supreme Court precedent draws a line analogous to that in Stanford. Therefore, while this court recognizes that it is undoubtedly bound by Supreme Court precedent, it identifies no Supreme Court precedent that would preclude it from applying the rule in Miller to 18 or 19 year old defendants.

In People v Masalmani, 943 N.W.2d 359, in Justice McCormack Dissent it is quoted "The Court acknowledged that the scientific evidence presented at the Miller hearing 'established that the prefrontal coetex continues to develop into one's mid-20s' but proceeding to disregard this evidence because the "Court is not free to take this developmental disconnect into consideration when a criminal defendant is over 18." This was a clear abuse of discretion. Miller did not suggest that 18 year olds are, as a class, equipped with the decision making faculties that 17 year olds lack. Nor did Miller suggest that a sentencer should disregard the expanding body of scientific knowledge on adolescent brain development merely because an older offender who, although developmentally similar, may be subject to mandatory LWOP sentencing. To the extent Miller drew a bright line at the legal age of majority, the Court was not suggesting that the adolescent development period ends at 18.

Proof that a 19 year old is capable of change can be found in the life of this amaci. Mr. Graham come from a violent, dysfunctional home in which his mother killed his father when the amici was 16 years old.

At the age of 15, the amici, Michael Graham suffered a serious head injury in an automobile accident. According to neroscience, it is possible that these tramatic incidents in the amici's life contributed to his lack of resscning and his impulsive behavior.

The amici, Michael Graham was 19 yearso old when he committed this crime and was subsequently convicted of first degree murder and sentenced to mandatory life.

Mr. Graham has been incarcerated since 1989(over 31 years) and has become a reliable, model prisoner as he has matured over the years. Mr. Graham has not received any misconducts in over 14 years. He has maintain a prisoner work assignment for many of years with above average evaluations. For the last 7 years, Mr. Graham has volunteered as a youth mentor. He has completed many self help programs, such as, Cage Your Rage, Thinking For A Change, Fathers Behind Bars, Thinking Matters, CMU Communications Course, just to name a few.

Mr. Graham is clearly not the same person he was when in entered the prison system over 31 years ago. Mr. Graham has matured and has taken full responsibility for his actions.

Respectfully Submitted,
Michael Graham #202845

Michael Graham #202845
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Date: 1-27-22

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LAYMAN

PROOF OF SERVICE

I, Michael Graham, declares that on this January , 2022, I mailed the following documents to the below listed parties:

1. MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

2. BRIEF AMICUS CURIAE

3. *MOTION* TO WAIVE FEES

4. PROOF OF SERVICE

Clerk
MICHIGAN SUPREME COURT
P.O. BOX 30052
LANSING, MI 48909

Kym Worthy
WAYNE COUNTY PROSECUTOR
1441 ST. ANTOINE ST. STE. 11
DETROIT, MI 48226

Date: January 27, 2022

Signature: Michael Graham