ARIZONA SUPREME COURT

STATE OF ARIZONA, ex rel. RACHEL H. MITCHELL, Maricopa County Attorney Petitioner/Plaintiff, vs. THE HONORABLE KATHERINE COOPER, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, Respondent Judge, LONNIE ALLEN BASSETT, Real Party in Interest/Defendant.	No. CR-22-0227-PR Court of Appeals Division One No. 1 CA-SA 22-0152 Maricopa County Superior Court No. CR2004-005097 **RESPONSE TO PETITION FOR REVIEW**

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INTRODUCTION

Real Party in Interest, Defendant Lonnie Allen Basset ("Defendant/Bassett"), opposes the Maricopa County Attorney's Office ("State")'s Petition for Review. In *State of Arizona v. The Honorable Katherine Cooper*; 1 CA-SA 22-00152, the court of appeals declined to accept special action jurisdiction of the State's Petition for review from the superior court's decision dated April 28, 2022.

The Honorable Katherine Cooper found Defendant Bassett was entitled to an evidentiary hearing to determine if the sentencing court adequately considered his youth and attendant characteristics when sentencing him to life-without-parole. The court found Defendant established two colorable claims warranting an evidentiary hearing: (1) "[a] colorable claim exists because Bassett was sentenced under a mandatory natural life sentencing scheme that *Miller* and *Jones* found to be unconstitutional" and (2) "[a] claim also exists because the Petition alleges facts that, if proven, establish that the trial court failed to adequately consider Bassett's youth and attendant characteristics because the court lacked critical information." (State's Attachment A; pp 4-5).

Because the trial court did not abuse its discretion when finding Bassett established colorable claims for relief under Rule 32.1(g) and granted him an evidentiary hearing, this Court should deny review.

ISSUE PRESENTED FOR REVIEW

1. Did the trial court abuse its discretion when finding Bassett was entitled to an evidentiary hearing because he was sentenced under a mandatory natural life sentencing scheme that the United States Supreme Court has found to be unconstitutional?

2. Did the trial court abuse its discretion when finding a colorable claim exists to warrant an evidentiary hearing because the sentencing court lacked critical information to hold an individualized sentencing hearing and sufficiently consider Bassett's youth and attendant characteristics?

MATERIAL FACTS

On June 16, 2004, Defendant Lonnie Bassett was riding in the backseat of a vehicle driven by Frances Tapia. Joseph Pedroza was seated in the front passenger seat of the vehicle with Bassett directly behind him. During the ride, Defendant pulled out a shotgun and fatally shot Pedroza (Count 2). He then fired two shots, fatally wounding Tapia (Count 1). The vehicle crashed into a light pole. Defendant and another passenger were able to get out of the vehicle and walk away but Bassett returned to retrieve the shotgun. The following day, officers apprehended Bassett who was sixteen years old when the incidents took place.

A Maricopa County Grand Jury indicted Defendant on two counts of first-degree murder. A notice of intent to seek the death penalty was struck after the United States Supreme Court dediced *Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183 (2005), in which the Court found the imposition of the death

penalty on juveniles to be unconstitutional. Thereafter Bassett exercised his right to a jury trial and was convicted of both counts. On January 27, 2006, the trial court sentenced Defendant to natural life in prison relating to the death of Tapia (Count 1). Defendant was sentenced to a consecutive term of life in prison with the possibility of parole after serving twenty-five years for the death of Pedroza. (Count 2). (State's Attachment #8, 9; pp 166-167, 170-173)[1]. Both convictions and sentences were affirmed on appeal.

Two Petitions for Post-Conviction Relief were previously filed. Defendant's first Post-Conviction Relief action was dismissed after counsel filed a Notice of Review on July 15, 2008, and Basset declined to file a *pro se* Petition. (Appendix 1). On June 13, 2013, Defendant filed a successive Notice of Post-Conviction Relief claiming a substantive change in the law, based upon *Miller v. Alabama*, 567 U.S. 460 (2012), entitled him to relief. (State's Attachment #10; pp 175-176). The PCR court dismissed the action finding it untimely, successive, and that Defendant's age was given "considerable weight" as a mitigating factor. (State's Attachment #11; pp 178-179).

The Arizona Justice Project filed a brief of *Amicus Curiae* in support of Defendant's motion for reconsideration. The court then ordered supplemental

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[1] To avoid duplication, the Attachments and Appendices referenced in this motion as "State's Attachment" are attachments and appendices to the State's Petition for Review.

briefing to address the retroactivity of *Miller* as to *Count 2 only*, the sentence of life with the possibility of parole. (State's Attachment #12; pp 181-183). The court concluded *Miller* applied retroactively and prohibited mandatory life sentences, however, denied relief as it found Arizona laws enacted in 2014 resolved the "residual issues" of those sentenced to life imprisonment by establishing parole eligibility for offenses committed before 2014. (State's Attachment #13; pp 185-192). A Petition for Review and a Motion for Reconsideration were denied by the Court of Appeals, Division II and Petition for Review with the Arizona Supreme Court was also denied. (State's Attachment #14; pp 194-196).

On January 18, 2017, Bassett filed a Notice of Post-Conviction Relief (State's Attachment #15; pp 198-201) and subsequent Petition raising the unconstitutional imposition of a natural life sentence for *Count 1* where the sentencing court failed to adequately consider Defendant's age of minority, impulsivity, and amenability to rehabilitation. The *Miller* requirements were not satisfied with the record silent in respect to key constitutional components necessary to survive scrutiny under *Miller, Montgomery,* and *Valencia.* Mere acknowledgment of Defendant's minor age did not meet the constitutionally required findings of irreparable corruption and transient immaturity. (State's Attachment #17; pp 206-212). The State conceded that Defendant was entitled to

an evidentiary hearing in its February 12, 2018, pleading. (State's Attachment #18; pp 214-215). Defendant, however, replied that a resentencing, not an evidentiary hearing, was warranted. (State's Attachment #19; pp 217-219). The matter was originally set for resentencing but, through a *Nunc Pro Tunc* Order, that setting was changed to an evidentiary hearing. (State's Attachment #20; p 221).

A limited stay of proceedings was granted June 4, 2019, while *Mathena v. Malvo* and *Jones v. Mississippi* was pending before the United States Supreme Court with issues germane to this case. (Attachment 2). *Mathena v. Malvo,* Docket No. 18-217, was dismissed by stipulation after state law was enacted allowing juveniles who were previously sentenced to life-without-parole to become eligible for parole after serving twenty years in prison. The Supreme Court decided *Jones v. Mississippi,* 141 S.Ct. 1307 (2021), and determined that neither *Miller*, *Montgomery,* nor the Eighth Amendment required a sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life-without-parole. Following the Court's decision, the State filed a request that Defendant's evidentiary hearing be vacated, and his Petition dismissed. (State's Attachment #21; pp 223-248). Defendant rose in opposition. (State's Attachment #22; pp 250-271).

On April 28, 2022, the trial court denied the State's request to vacate the evidentiary hearing and dismiss the Petition after briefing and oral argument was heard. Respondent Judge concluded that the *Jones* decision did not deprive Bassett of an evidentiary hearing if Defendant was able to establish a colorable claim.[2] The court further found that Defendant did established two colorable claims warranting a hearing: (1) "a colorable claim exists because Bassett was sentenced under a mandatory natural life sentencing scheme that *Miller* and *Jones* found to be unconstitutional" and (2) "a claim also exists because the Petition alleges facts that, if proven, establish that the trial court failed to adequately consider Bassett's youth and attendant characteristics because the court lacked critical information." (State's Attachment A; pp 4-5). The State's Motion for Reconsideration was denied on May 26, 2022. (State's Attachment 2). The State then sought review with the Court of Appeals, filing a Petition for Special Action. On August 10, 2022, the Court of Appeals exercised its discretion and declined to accept jurisdiction. (Defense Appendix 3). Thereafter the State filed a Petition for Review.

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[2] Respondent Judge correctly found "*Jones* holds that there are no magic words required – that the sentencer is not required to make a separate express or implied factual finding of permanent incorrigibility before imposing a LWP sentence on a juvenile offender. *Jones* does not overrule *Miller* or *Montgomery.*" (State's Attachment A).

REASONS WHY THE COURT SHOULD DENY REVIEW

1. The trial court correctly found Bassett established a colorable claim warranting an evidentiary hearing because he was sentenced under a mandatory natural life sentencing scheme that *Miller* and *Jones* found to be unconstitutional

The trial court did not abuse its discretion when adjudicating Bassett's Petition for Post-Conviction Relief and concluding that Defendant was sentenced under a mandatory natural life sentencing scheme that has been found to be unconstitutional.

a. Respondent Judge did not exceed her authority when adjudicating Bassett's Rule 32 Action as the claim was not finally adjudicated

Defendant's claim is not precluded despite the State's erroneous assertion the issue pending before this Court was raised in a 2013 Post-Conviction Relief action. (State's Petition, pp 2, 11-12). The State fails to recognize that the 2013 post-conviction relief ruling, dated 07/02/2013, was a ruling that was subject to additional litigation after which a decision was rendered relating to Count 2 only, the sentence of life with the possibility of release. (Defense Appendix 4).

Specifically, and procedurally, on June 20, 2013, Defendant filed a successive Notice of Post-Conviction Relief in which he claimed a substantive change in the law entitled him to relief based upon the United States Supreme Court decision in *Miller v. Alabama, 567* U.S. 460 (2012). The court dismissed

the action after finding it was untimely, successive, and that Defendant's age was given "considerable weight" as a mitigating factor. (State's Attachment #11, pp 178-179). Defendant filed a motion for reconsideration with the Arizona Justice Project filing a brief of *Amicus Curiae* in support of Bassett's motion. Thereafter the Court ordered supplemental briefing to address the retroactivity of *Miller* as it applied to Count 2 only. (State's Attachment #12, p 2, ¶ 6).

The court's final analysis issued in a May 9, 2014 ruling applied to Count 2, Defendant's life sentence with the possibility of "parole." There the court deduced *Miller* could apply retroactively and could prohibit mandatory life sentences for juvenile offenders. Relief was denied, however, when the court concluded Arizona laws enacted in 2014[3] resolved the paradoxical impossibility faced by defendants sentenced to life with the possibility of parole although parole had been abolished through the establishment of laws creating "parole eligibility" for offenses committed before 2014. (Defensen Appendix 4). The Court then ordered a parole eligibility date be set for Defendant as to Count 2. (State's Attachment #13, pp 185-192). The issue raised in the current Petition has not been litigated as to Count 1, Defendant's natural life sentence. Accordingly, this issue was not precluded and was subject to Respondent Judge's review.

[3] A.R.S. §§ 13-716 and 41-1604.09(I)

b. Respondent Judge did not abuse her discretion when finding Bassett was sentenced under an unconstitutional, mandatory natural life sentencing scheme

Respondent Judge correctly found Bassett was sentenced under a mandatory natural life sentencing scheme that *Miller* and *Jones* found to be unconstitutional. A sentencing scheme, such as that in effect when Bassett was sentenced, one that failed to afford the court the discretion to impose a sentence that carried the possibility of parole, does not meet the constitutional requirements set forth by the United States Supreme Court in *Miller v. Alabama,* 132 S.Ct. 2455 (2012).

In 2006, when Bassett was sentenced, parole was an illusory concept as it had been abolished in Arizona for crimes committed on or after January 1, 1994, twelve years earlier. The abolition was done in two steps. First, the authority to grant parole by the Board of Executive Clemency was abolished for crimes committed after January 1, 1994. Second, a system of earned release credit was enacted in its place. The system of earned release credits does not apply to life sentences. (1-ER-12 to 1-ER-13 (*citing State v. Vera*, 334 P.3d 754, 758 (Ariz. Ct. App. 2014)). Therefore, any sentence of life with the possibility of parole imposed upon a defendant contained no actual opportunity or mechanism for parole.

The United States Supreme Court has acknowledged Arizona's mandatory sentencing scheme in cases such as Bassett. In *Miller*, the Supreme Court stated,

"29 jurisdictions (28 States and the Federal Government) make a life-without-parole term mandatory for some juveniles convicted of murder in adult court." 132 S.Ct. at 2477. The Court furthered that "[o]f the 29 jurisdictions mandating life without parole for children, more than half do so by virtue of generally applicable penalty provisions, imposing the sentence without regard to age." *Miller* at 2481. Arizona was included by the Supreme Court as one of the twenty-nine jurisdictions with mandatory life-without-parole sentences for such juvenile homicide offenders. *Id.* n.13.

In *Miller*, the Court stated, "[b]y requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate the principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." *Miller*, supra at 2484. *Miller* squarely established a life-without-parole sentence imposed where a judge lacks the discretion to impose any other sentence that would result in natural life violates the Eighth Amendment.

The *Miller* holding requires a discretionary sentencing scheme to meet constitutional muster. Bassett's sentencing judge could not have legally imposed a sentence that carried any possibility of parole; the sentencing laws under which Bassett was sentenced were mandatory, not discretionary, as a matter of state law.

The mandatory scheme prevented the judge from pronouncing a sentence of anything other than that which would result in Bassett serving life-without-parole. Bassett's sentences ran afoul of the protections guaranteed in the Eighth Amendment. As such, Respondent Judge did not abuse her discretion when finding that the sentencing court lacked any discretion to impose a sentence that included the possibility of parole. Instead, a life sentence was the practical result of the statutory sentencing scheme at the time Bassett's sentences were pronounced contrary to that which *Miller* requires for a constitutionally sound sentencing. (State's Attachment A, p5).

c. Respondent Judge did not err when finding application of Arizona's mandatory sentencing scheme violated the Eighth Amendment

The State contends Arizona's sentencing was not mandatory. However, the State has not provided any legal argument that counters the Supreme Court's finding in *Miller* that included Arizona as a state with a mandatory sentencing scheme. Instead, the State claims that sentencing was discretionary because the sentencing judge chose between "different sentences" and considered Bassett's age. (State's Petition, PP12-19). Here the state fails to meaningfully engage in the constitutional implications of Arizona Legislature's decision to abolish the parole scheme for all crimes, including those of Bassett, committed after January 1, 1994.

The application of the sentencing scheme in conjunction with the eradication of parole provided only one, logistical and plausible outcome, a life sentence which clearly violates the procedural rule announced in *Miller* and affirmed in the *Jones* holding as well as the Eighth Amendment guarantee to be free from cruel and unusual punishment.

Alternatively, the State claims there was "a belief a lesser sentence was available." (*Id.* at 20). Such a "belief" does not cure constitutional deficiencies in a mandatory sentencing scheme. If a court's theoretical ability to impose a parole-eligible sentence in violation of state law were an exception to *Miller,* the exception would swallow the rule. As recently as 2021, Arizona courts have been recognized for their errors when addressing the flawed and problematic concept of parole and discretionary sentencing. "Despite the elimination of parole, prosecutors continued to offer parole …, and judges continued to accept such agreements and impose sentences of life with the possibility of parole." *Viramontes v. Att'y General*, No. 4:16-cv-151-TUC-RM, 2021 WL 977170, at *1 (D. Ariz. Mar. 16, 2021). "This practice resulted from "an error so widespread among attorneys and judges that Arizona enacted new legislation… in response." *Viramontes v. Ryan*, No. 4:16-cv-151-TUC-RM, 2019 WL 568944, at *7 (D. Ariz. Feb. 12, 2019); A.R.S. § 13-716.

As Respondent Judge deduced, the practical implication of both sentences were terms of natural life, despite the belief of the prosecutors and judges. In her ruling, Respondent Judge rejected the State's argument that a choice of sentence equated to a discretionary sentencing scheme. Referring to the rationale utilized by the *Valencia* court, Respondent Judge "observed that the sentencer had the option of life with possible release after 25 years, it found that the natural life sentences 'did amount to sentences of life without the possibility of parole' because 'in 1993 Arizona eliminated parole for all offenders, including juveniles, who committed offenses after January 1, 1994, and replaced it with a system of 'earned release credits,' which do not 'apply to natural life sentences.'" (State Attachment A; *State v. Valencia*, 241 Ariz. 206, 208 (2016).

d. Subsequent legislation failed to cure the constitutional deficiencies of Arizona's sentencing scheme as it relates to life-without-parole sentences

The State appears to concede parole was illusory, and asserts the lack of "parole procedures" did not create a mandatory sentencing scheme. (*Id.*). The State claims subsequently enacted legislation cured the constitutional deficiencies of the sentencing scheme for juveniles sentenced to life without the possibility of parole. However, the *Jones* decision leaves no doubt that the sentencing judge must have the discretion to impose a parole eligible offense *at the time of* the sentencing hearing. *Jones supra* at 1317. Importantly, A.R.S. § 13-716 did not

make all juvenile homicide offenders eligible for parole as *Jones* mandates. Rather, A.R.S. § 13-716 applies only to those sentences where a juvenile was sentenced to life *with* the possibility of parole after serving twenty-five years. Thus, A.R.S. § 13-716 converts only the otherwise lawful sentences into *Miller*-compliant sentences, not otherwise unlawful ones. As such, Respondent Judge correctly interpreted and applied the holdings of *Miller* as applied in Arizona through *Valencia*. *See State v. Valencia*, 241 Ariz. 206, 210 (2016) (A.R.S. § 13-716 did not cure any *Miller* violations for "inmates serving natural life sentences for murders committed by juveniles.").

e. Respondent Judge's Reliance on the analysis of *Valencia* and *Wagner* was consistent with the holdings of *Miller* and *Jones*

Respondent Judge's reliance upon the legal reasoning contained within the *Wagner* decision that found *Valencia* to be Arizona's controlling law was not misplaced. *State v. Wagner,* 510 P.3d 1083 (2022); *See State v. Valencia*, 241 Ariz. 206 (2016)(*Miller* is a significant change in the law that applies retroactively and may require resentencing of juveniles serving natural life sentences). In *Wagner*, the Court of Appeals found the *Miller* sentencing considerations were implicated when Defendant, a 16-year-old convicted of murder and sentenced to life-without-parole, was sentenced under a mandatory Arizona sentencing system after parole had been abolished. 253 Ariz. 201, ¶26.

The *Wagner* court analyzed the *Jones*[4] decision, finding it did not not render *Valencia* untenable and should therefore remain applicable Arizona law. *Valencia* is well-grounded in the rulings of *Miller* and *Montgomery*, cases that the United States Supreme Court, in *Jones*, explicitly stated it was not overruling. *See Wagner* at ¶20; *Jones supra* at 1321. The *Jones'* interpretations of *Miller* and *Montgomery*, (1) that a judge is not obligated to make a finding of "permanent incorrigibility" before imposing a life sentence and (2) that a judge need not make specific findings about "permanent incorrigibility" or "transient immaturity" when determining parole eligible sentences are harmonious with *Valencia*." *Wagner* at ¶20 Despite the State's assertion and as the Supreme Court stated, the *Jones* decision did not "implicitly overrule" the application of *Miller* and *Montgomery* for those juveniles who have been sentenced to life terms under a sentencing scheme that could not allow for the possibility of parole. *Id.* at ¶ 21.

The *Wagner* Court reiterated the "crux" of *Miller* requires (1) the option of imposing a parole-eligible sentence upon a juvenile offender who is required to serve a life term, and (2) the court consider youth in determining whether to impose a parole-eligible sentence. *Id.* at ¶ 22. Because the superior court had no

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[4] Respondent Judge stated, "*Jones* holds that there are no magic words required, that the sentencer is not required to make a separate express or implied factual finding of permanent incorrigibility before imposing a life-without-parole sentence on a juvenile homicide offender." (State Appendix A, p3).

discretion to impose "alternative non-parole eligible penalties" to those juveniles who have been sentenced to life terms under a sentencing scheme that could not allow for the possibility of parole, the principles of *Miller* apply. *Id.* The Court struck down any argument that a life sentence with the possibility of "release by executive clemency," the only option available to *Wagner* and Bassett, was not the equivalent of a life sentence with the possibility of parole. *Id.* at ¶¶ 22, 23. The Court of Appeals recognized that some courts had mistakenly sentenced defendants to parole-eligible terms in violation of state law, or erroneously described a non-parole-eligible sentence as parole eligible and found the sentencing procedure did not comport with *Miller. Id.*

Accordingly, the reasoning of *Wagner* and *Valencia*, and the principles of *Miller* apply in this matter. Respondent Judge did not abuse its discretion when finding Bassett was sentenced under a mandatory sentencing scheme because the crimes for which he was convicted occurred after the elimination of parole and the natural life sentences did amount to life without the possibility of parole. Respondent Judge correctly concluded that Bassett was sentenced under laws that did not allow for discretion and is entitled to an evidentiary hearing to determine whether his sentencing on Count 1 met constitutional requirements as set forth in *Miller* and *Jones*.

2. The trial court correctly found Bassett established a colorable claim warranting an evidentiary hearing because the sentencing court lacked critical information of Bassett's youth and attendant characteristics to provide a constitutionally sufficient individualized sentencing hearing

Respondent Judge correctly concluded Bassett was not afforded a sentencing hearing that adequately considered his youth and attendant circumstances. *Miller* requires meaningful consideration of youth in determining whether to impose a parole-eligible sentence to comport with constitutional muster. *Miller* requires both the option of a parole-eligible sentence and consideration of youth when determining whether to impose a parole-eligible sentence. Despite this requirement, Defendant was not provided with an individualized sentencing. *See Jessup v. Shinn*, 31 F. 4th 1262 (2022).

A judge is not constitutionally required to make a particularized factual finding that a juvenile homicide offender is permanently incorrigible or to provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible. *Jones supra,* 141 S.Ct. at 1311-1314, 1316, 1318-1321. However, the United States Supreme Court, in *Jones,* unambiguously stated this decision does not overrule either *Miller* or *Montgomery* which require youth to be meaningfully considered. 141 S.Ct. at 1321-22. "A sentence [must] follow a certain process – considering an offender's youth and attendant

characteristics – before imposing a life-without-parole sentence." *Id.* (*quoting Miller*, 132 S.Ct. at 2478). "A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. The hearing does not replace but rather give effect to *Miller's* substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Montgomery v. Louisiana,* 136 S.Ct. 738 (*citing Miller* 132 S.Ct. at 2450). Under these precedents, Petitioner is entitled to an evidentiary hearing to determine whether his sentence runs afoul of the holdings.

In its pleading, the State claims Respondent Judge ignored a Ninth Circuit decision, *Jessup v. Shinn*, 31 F. 4th 1262 (2022). While the *Jessup* Court limited its findings to Mr. Jessup's case, the sentencing principles actually support the Judge's findings and Basset's claim. Id. at *5 ("We hold that the state court reasonably concluded that, despite this practical result, *Miller* does not mandate a resentencing in the circumstances of his case."). The Jessup Court found a natural life sentence did not violate *Miller* principles because Jessup received an individualized sentencing hearing. The Court placed great weight on the trial court's review of extensive mitigation that was considered before the imposition of sentence, stating it "thoughtfully considered whether Defendant warranted a sentence of life with the possibility of any form of release, took into account and

fully considered Defendant's youth and the characteristics of young people, and concluded that Defendant warranted a sentence of life without the possibility of release." Jessup at **3, 13. The Court stressed the attention and detail of the sentencing court's thought process and reflection upon information presented at sentencing. *Id.* ("given the sentencing judge's extensive deliberation here as to whether Defendant warranted the possibility of release."). Accordingly, the Court found the sentencing judge held an "individualized sentencing hearing." *Id.* at **1-5.

At Jessup's sentencing hearing, the parties debated the appropriate sentence with Jessup's attorney presenting in-depth and comprehensive information for the Court's consideration. *Id.* at *6. Unlike Basset, Jessup's attorney presented testimony of a psychologist who studied Jessup, emphasizing his age and age-related characteristics. This included a presentation of his delayed emotional age. A twenty-four-page, single-spaced report was presented to assist the Court that compared the psychologist's findings of Jessup as compared to those of other youthful offenders. A description of Jessup's maturity level, impulse control abilities, and an explanation as to why his maturity was stunted was provided to the court. *Id.* Jessup's lawyers addressed the sentencing court, stressing the characteristics of his youth and discussed his ability and potential to reform. This was reinforced by the psychologist's opinion. *Id.* at **2, 3. Unlike the vast

presentation of information regarding Jessup's age/youth that was presented at the sentencing hearing of Jessup, Bassett's sentencing hearing was constitutionally void and deficient.

Defendant Bassett was not afforded the opportunity to have his youth meaningfully considered by the judge to determine whether he was among the "rarest of juvenile offenders." In this specific case, the sentencing judge did not consider Bassett's youth and his attendant circumstances in a meaningful sentencing hearing to sufficiently meet constitutional scrutiny. The sentencing judge was not presented with essential evidence as to the age and specific attendant characteristics of Bassett for consideration. Rather, generalized statements about youth were provided to the court by Defendant's counsel. In a sentencing memorandum submitted prior to sentencing, counsel merely listed Defendant's age and then quoted three paragraphs from *Roper v. Simmons,* 543 U.S. 551, 125 S. Ct. 1183 (2005) that discussed generic statements about juvenile characteristics but offered nothing specific to Bassett's attendant characteristics. This falls far short of the sentencing presentation of Jessup.

Sentencing was completely devoid of any specific evaluation or discussion of Bassett's actual psychological age and attendant characteristics associated with that age, let alone those of a sixteen-year-old male or comparisons drawn between the two. No professional psychological evaluations were ever conducted of

Bassett nor presented to the court in anticipation of sentencing. The state even pointed out to the court that "[t]here is no current psychological evaluation." (State's Attachment #8, p19). In a double homicide case, counsel failed to have any sort of forensic evaluation or assessment of Bassett to discuss his risk to reoffend and plan for risk management. Counsel failed to employ any sort of forensic mental health expert, forensic social worker, forensic psychiatrist, or psychologist to examine Defendant and make findings for the court about Defendant's psychological age and characteristics he displayed that would mitigate his guilt. While the Jessup Court completed a meaningful and thoughtful deliberation upon the information presented before imposing sentence, Bassett's sentencing judge was unable to do so as the information was never presented to the court for consideration. Accordingly, the sentencing principles of the *Jessup* decision are applicable to Mr. Bassett's sentencing and highlight his sentencing deficiencies as found by Respondent Judge.

As reiterated in *Jessup, Miller* requires, for a juvenile offender sentenced to life without the possibility of parole, an individualized sentencing hearing during which the sentencing judge assesses whether the individual juvenile defendant warrants a sentence of life with the possibility of parole. *Id.* at *5. Respondent Judge correctly concluded, after considering the record of the sentencing and information that was provided to the court, a colorable claim exists that, if proven,

establish the trial court failed to adequately consider Bassett's youth and attendant was deprived of such considerations. The Court of Appeals was correct when denying jurisdiction of the Special Action.

CONCLUSION

In considering a Petition for Post-Conviction Relief, the court is required to set a hearing on all claims that present a material issue of fact or law. A.R.S. § 13-4236. A colorable claim is one that has the appearance of validity such that if the allegations are true, would change the verdict or sentence. Respondent Judge did not abuse its discretion when determining Bassett is entitled to a hearing because he has presented facts that, if true, would probably have changed the sentence. For the foregoing reasons, the Court should deny the State's Petition for Review.

RESPECTFULLY SUBMITTED on this 7th day of October 2022.

By: /s/ Amy Bain
Amy E. Bain
Bain & Lauritano, PLC