ARIZONA SUPREME COURT

STATE OF ARIZONA ex rel. RACHEL H. MITCHELL, Maricopa County Attorney Petitioner, 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.	No. CR-22-0227-PR No. 1 CA-SA 22-0152 Maricopa County Superior Court No. CR2004-005097 **STATE'S RESPONSE TO BRIEF OF *AMICUS CURIAE* NAZEEM, GIBSON, ABDULLAH, AND GREENWOOD**

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I. INTRODUCTION

Neither *Miller v. Alabama*, 567 U.S. 460, 483 (2012) nor *Montgomery v. Louisiana*, 577 U.S. 190 (2016) mandate a sentence of life *with the possibility of parole*, as advocated by Nazeem, Gibson, Abdullah, and Greenwood (collectively "Amicus"). In fact, *Miller* decisively did *not* categorically bar life without the possibility of parole sentences. 567 U.S. at 479, 483. *See also State v. Soto-Fong*, 250 Ariz. 1, 7 (2020) ("*Miller* did not impose a categorical ban on parole-ineligible life sentences for juveniles.") Rather, *Miller* held "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" because it precludes consideration of a juvenile offender's age and the hallmark features of youth. *Id*.

Regarding the sentencing procedure, *Miller* "mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id*. at 483. *Jones v. Mississippi*, clarified that is *all Miller* requires. 141 S Ct. 1307, 1311-21 (2021) (*Miller* "mandated 'only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence," and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) *only* made *Miller* retroactive and did *not* "add to *Miller*'s requirements."). *See also Soto-Fong*, 201 Ariz. at 7, ¶¶22-23 (foreshadowing *Jones*, this Court agreed with Justice Scalia's

dissent in *Montgomery* that *Miller* "merely mandated that trial courts 'follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty.'") (Citations omitted.)

The process mandated by *Miller* is the type of sentencing procedure that was already in place and applied at Bassett's Arizona sentencing proceeding. Thus, Bassett is not entitled to an evidentiary hearing to present more and is certainly not entitled to a particular sentence that includes the possibility of parole for Tapia's murder, as suggested by Amicus.

II. ARGUMENT

A. Bassett presented the mitigating qualities of his youth at sentencing.

Amicus cursorily asserts that the State deprived Bassett of "a meaningful opportunity to demonstrate his maturation and rehabilitation … and seek release" because parole was abolished.[1] (Brief at 1.) A review of the record in this case

[1] To the extent Amicus argues that *Miller* requires meaningful or specific parole procedures for youth, not only is that issue not before this Court but that argument is wholly without support. (Brief at 1-5.) Nothing in *Miller*, *Montgomery*, or *Jones* requires protective treatment for youth *at parole*. And to the extent Amicus argues that all juvenile offenders should be sentenced to a sentence with the possibility of parole, that is an issue for the state legislature, not this Court. Again, *Miller* did not categorically bar life without parole sentences for juveniles. As the *Valencia* concurrence recognized, while *Miller*'s "intuition … that children who commit even heinous crimes are capable of change … is laudable," it is "no substitute for the rule of law, or for the justice it seeks to secure not only for wrongdoers but for those impacted by the most grievous of crimes." *State v. Valencia*, 241 Ariz. 206, 212, ¶31 (2016) (Bolick, J. concurring). (Citation omitted.)

demonstrates that is incorrect.

The absence of parole procedures at the time Bassett was sentenced did not mandate a sentence of life without the possibility of parole sentence, as prohibited by *Miller*, or prevent Bassett from presenting information about his age, youth and attendant characteristics. After an 8-day trial, where the jury rejected Bassett's self-defense claim and convicted him of two counts of first-degree murder, the parties presented aggravation and mitigation and argued what sentences they believed were appropriate for the two murders. After considering everything presented, including the evidence at trial, the court determined that a sentence of natural life was appropriate for Tapia's murder and a consecutive sentence of life with the possibility of parole after 25 years was appropriate for Pedroza's murder. (App166-67.)

Therefore, contrary to Amicus's unsupported assertion, Bassett was given an opportunity to present his mitigating qualities of youth, which the trial court clearly considered, and his sentencing was constitutionally sufficient under *Miller*. *Jones*, 141 S. Ct. at 1313 ("a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient.").

Amicus details three developmental characteristics that distinguish children from adults, which should be considered when sentencing juvenile offenders. (Brief at 3-5.) The State agrees that these characteristics form the basis for *Roper v. Simmons*, 543 U.S. 55 (2005) and *Graham v. Florida*, 560 U.S. 48, 68 (2010), as

well as *Miller*, which "flows straightforwardly" from *Roper* and *Graham*. 567 U.S. at 471, 479-80, 483. In fact, these three characteristics should sound familiar to this Court, in the context of this case, because Bassett presented his mitigation through the lens of *Roper* and those same characteristics.

Before sentencing, Bassett argued that because he was 16 years old when he committed the crimes, he did not possess the "impulse control of an adult." (App38.) Citing *Roper*, Bassett noted the "profound differences between adults and juveniles and the ramifications those difference[s] makes when addressing juvenile crime." (*Id*.) Bassett pointed to three general differences between juveniles and adults: 1) a lack of maturity and underdeveloped sense of responsibility resulting in impetuous and ill-considered actions; 2) juveniles are more vulnerable and susceptible to negative influences and peer pressure; and 3) a juvenile's character is not well formed rendering suspect any conclusion that a juvenile is among the worst offenders and "the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." (Quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). (App38-39.)

In closing, defense counsel argued that a juvenile's character is not fully formed at age 16. (App157.) Counsel quoted Justice Kennedy's *Roper* opinion, arguing "[t]he relevance of youth as a mitigating factor derives from the fact that the

signature qualities of youth are transient. As individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." (*Id*.)

Furthermore, consistent with the sentencing protections required by *Roper*, *Graham*, and *Miller*, the State acknowledged that Bassett's age, 16 and a half at the time of the murders, was a mitigating factor under Arizona law. (App106 (citing A.R.S. § 13-703(G)(5)). The State cited *State v. Clabourne*, 194 Ariz. 379, 386, ¶28 (1999) (citing *State v. Jackson*, 186 Ariz. 20, 30-31 (1996)),[2] which held that "[i]n addition to chronological age," the court was required to consider Bassett's "(1) level

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[2] At the time of Bassett's sentencing, it was

> well settled that the age of the defendant at the time of the commission of the murder can be a substantial and relevant mitigating circumstance. *State v. Valencia*, 132 Ariz. 248, 250, 645 P.2d 239, 241 (1982); *see Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S.Ct. 869, 877, 71 L.Ed.2d 1 (1982); A.R.S. § 13–703(G)(5). The younger the defendant, the greater the weight age has as mitigation. *See State v. Gerlaugh*, 144 Ariz. 449, 461, 698 P.2d 694, 705 (1985). However, chronological age is not the end point of the analysis, but the beginning. *See State v. Gillies (Gillies I)*, 135 Ariz. 500, 513, 662 P.2d 1007, 1020 (1983) (defendant's age alone will not always require leniency). In addition to youth, we consider defendant's level of intelligence, maturity, involvement in the crime, and past experience. *State v. Bolton*, 182 Ariz. 290, 314, 896 P.2d 830, 854 (1995) (citing cases).

State v. Jackson, 186 Ariz. 20, 30 (1996). *See also State v. Valencia*, 241 Ariz. 206, 210-11, ¶23 (2016) (Bolick, J. concurring) (in addition to requiring "trial courts to consider age as a mitigating factor in determining punishment for first-degree murder," *see* A.R.S. § 13–701(E)(1), trial courts must also consider a juvenile's "'level of maturity, judgment and involvement in the crime.'") (Quoting *State v. Greenway*, 170 Ariz. 155, 170 (1991)).

of intelligence, (2) maturity, (3) participation in the murder, and (4) criminal history and past experience with law enforcement." (App106.) The trial court considered all this and more, as detailed *infra*, when sentencing Bassett. Therefore, it is indisputable that Bassett already received the sentencing protections that Amicus asserts are required when sentencing juvenile offenders.

B. Bassett received the type of discretionary, individualized sentencing required by *Miller*.

The stories of four juveniles convicted of murder in other states, including the facts of their crimes, their incarceration, and their release, are irrelevant to whether Bassett's natural life sentence for Tapia's murder, imposed under Arizona's sentencing scheme, is constitutional under *Miller*. This is especially true considering the importance of individualized sentencing that was emphasized by *Miller*.

Miller mandates that a sentencer consider a juvenile offender's age and youth and attendant characteristics, not the characteristics, facts, crimes, or release of other juvenile offenders. 567 U.S. at 483. Through the process of considering a juvenile offender's youth and attendant characteristics the sentencer will consider the murderer's "diminished culpability and heightened capacity for change." *Jones*, at 1316 (quoting *Miller*, 567 U.S. at 479.) This "sentencing procedure ensures that the sentencer affords individualized 'consideration' to, among other things, the defendant's 'chronological age and its hallmark features.'" *Id*. (quoting *Miller*, 567 U.S. at 477.) *Jones* also reasoned that a sentencer is "deemed to have considered the

relevant criteria, such as mitigating circumstances enumerated in the sentencing rules." *Id*. at 1319-21. A review of Bassett's Arizona sentencing confirms that his sentencing was constitutionally sufficient under *Miller*, as clarified by *Jones*.

Again, regarding Bassett's age, Arizona law required the court to consider not only Bassett's chronological age of 16 but his "(1) level of intelligence, (2) maturity, (3) participation in the murder, and (4) criminal history and past experience with law enforcement." *Clabourne*, 194 Ariz. at 386, ¶28. These considerations largely mirror *Miller*'s hallmark features.

Miller describes a juvenile's age, youth, and attendant characteristics as hallmark features that may include: "immaturity, impetuosity, and failure to appreciate risks and consequences"; family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional"; "the circumstances of the homicide offense, including the extent of his participation in the conduct"; "familial and peer pressures"; possible conviction of a lesser offense; "inability to deal with police officers"; and the "possibility of rehabilitation." 567 U.S. at 477-78. Here, before sentencing Bassett, the trial court received information about Bassett's age and the hallmark features of his youth.

The court repeatedly heard Bassett was 16 years old when he committed these murders and about how children are different than adults, including their impulsivity and impetuosity. The State recognized Bassett's age of 16 and a half was a

mitigating factor under A.R.S. § 13-703(G)(5) and the considerations required by that factor. (App106, 143.) Applying these considerations to Bassett, the State described Bassett as extremely intelligent and not immature or impulsive, as mature enough to handle his own money, attend school full time and work in the summer, as a sexually responsible ladies' man, as the sole participant in the murders, and detailed that his three juvenile referrals were for minor infractions. (App106-07.) The State asked the court to consider all this information in determining the weight to give Bassett's age in mitigation. (App109.)

Defense counsel emphasized that Bassett "was a child at 16 years old when he committed the crimes." (App154.) He explained the Supreme Court eliminated the death penalty for juveniles because "they took notice of numerous scientific studies" showing "portions of the brain that control impulsivity and foresight and appreciation of consequences don't really form fully until the early 20's." (*Id*.) Bassett argued because he was 16 years old, he did not possess the "impulse control of an adult." (App38.)

Bassett quoted extensively from *Roper*, 543 U.S. 55, in his sentencing memorandum and noted the "profound differences between adults and juveniles and the ramifications those difference[s] makes when addressing juvenile crime." (App38Exh. D at 7.) Quoting *Roper*, Bassett noted three general differences between juveniles and adults: 1) juveniles' lack of maturity and underdeveloped

sense of responsibility resulting in impetuous and ill-considered actions, 2) juveniles are more vulnerable and susceptible to negative influences and peer pressure, and 3) because a juvenile's character is not well formed, and "the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient [and] as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside," any conclusion that a juvenile is among the worst offenders is suspect. (App38-39 (quoting *Johnson*, 509 U.S. 350).)

Information was presented about Bassett's maturity and potential for rehabilitation. Defense counsel argued that although Bassett's steady employment reflect maturity, he did not possess the maturity to handle the freedom he was given and his juvenile referrals, which were "immature juvenile acts," demonstrated this. (App154-56.) Bassett's steady employment and advanced school classes prior to the crimes and his self-improvement after incarceration, however, supported his potential for rehabilitation. (App34, 40, 59-67, 106.) Bassett argued that he had the tools to better himself and asked he be given an opportunity to "outgrow[] his character flaws." (App157-58.) Bassett argued he was remorseful and apologized to the victims in allocution. (App40, 158-62.) Several people wrote letters in support of Bassett stating he was kind, generous, a hard worker, was taken advantage of because of his kindness, and if given a chance could show he is a good person. (App83-88, 99.)

Information was presented that Pedroza was allegedly a negative influence on Bassett. Mr. Alexander told the court at sentencing that Bassett was just a 16-year-old kid who was preyed upon by Pedroza and others like him. (App149-51.) Bassett's girlfriend told the court Bassett made a bad decision that night, was only 16 years old, and was scared. (App152-53.) Counsel emphasized that *Roper* determined juveniles are more susceptible to negative influences than adults, like what occurred here with Bassett and Pedroza. (App157.) The State countered that the Alexanders were a positive influence on Bassett, and the jury rejected his self-defense claim. (App108.)

Information was presented about Bassett's past conduct and contact with police. The State noted that Bassett was reputed to carry a gun, had been in a lot of fights, was in counseling and anger management classes, and was nicknamed "Little Scrapper" for fighting. (App108-09.) The State also presented information about Bassett's ability to deal with police including evidence of his prior juvenile referrals and the fact that Bassett requested the presence of his mother before he was questioned by police. (App108.)

Bassett presented information about his family background. Bassett was kidnapped by his father when he was 2 years old and raised by friends after his mother did not want to assume responsibility for him. (App33.) Bassett's father was charged and convicted for this kidnapping. (App33-34, 43-57.)

Bassett's psychiatric evaluation, conducted two years before the murders by Jewish Family and Children's Services, was presented to the court. (App34-35, 70-74.) The evaluation detailed the physical abuse by his father, neglect by his parents, exposure to domestic violence as a child, and drug and alcohol use (App70-74.) Bassett was diagnosed with Post Traumatic Stress Disorder (PTSD), neglect, abuse, depressive disorder NOS, and other psychosocial and environmental problems. (*Id*.) Bassett was prescribed medication which he was not taking on the night of the shootings. (App35.)

Counsel argued that Bassett's PTSD, hypervigilance, and "exaggerated startle response," resulted from his childhood background—abuse by his father and exposure to domestic violence—and that he stopped taking his medication, which likely caused him to overreact on the night of the shootings. (App34-35, 40.) Counsel argued Bassett's PTSD compounded his impulsivity. (App156.) Evidence showed, however, that although Bassett's mother did not raise him, the Alexanders gave Bassett a home, food, a job and supported him throughout the trial and sentencing.

Finally, defense counsel argued a juvenile's character is not fully formed at age 16. (App157.) Quoting Justice Kennedy's *Roper* opinion, defense counsel argued, "[t]he relevance of youth as a mitigating factor derives from the fact that the

signature qualities of youth are transient. As individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." (*Id*.)

Before sentencing Bassett, the trial court heard the evidence presented at trial, read the presentence report, the memoranda filed by the State, Bassett, and the Crime Victims Legal Assistance Project, and the letters attached to the presentence report, and heard the information and argument at the sentencing hearing. (App130-31, 163-6.) The State recognized Bassett's age was mitigating but argued natural life sentences were still appropriate based on the aggravating factors. (App143, 148.) Defense counsel asked for sentences where Bassett be considered for parole, no earlier than 25 years from now, to allow him to outgrow his character flaws. (App157-58.)

After stating that it had carefully read and considered everything submitted, the trial court gave the following explanation for Bassett's sentences:

> And I've considered the following factors: I've considered the emotional harm to the victims, the surviving family members. And the harm to the surviving members is substantial, and as we heard today it spans several generations.
>
> I have considered the physical cruelty as to Frances Tapia. She was conscious after the first would was inflicted by you. She reacted to it. She tried to deflect the second shot she anticipated. She undoubtedly suffered physical pain before she was killed. She was still driving, and some period of time separates the two shotgun blasts. And as the evidence also established, she was screaming between shots.
>
> I've considered the basic statutory aggravating factors of the serious physical injury, which goes without saying, and the use of a

deadly weapon also pointed out by both counsel on both sides. I've considered the fact that these are multiple homicides.

I've considered your juvenile delinquent behavior and record. You do have two adjustments for possession of marijuana and possession for drug paraphernalia and for assault in 2003.

I've considered also the grave risk of death to Chad Colyer. You shot the driver of the vehicle in which Mr. Coyler was the passenger.

I also considered the fact you brought extra ammunition into the car as evidence of your intent and as evidence of your—the danger that your conduct presents to the public.

I've considered the following factors which are in mitigation:

Your age. You were 16-and-one-half years old at the time of the crimes, and this factor is given considerable weight by the Court. But the weight is tempered because of your intelligence, your obvious intelligence, the fact that you were able to obtain and hold employment and apparently do very well with employment.

I've also considered your contact with the juvenile justice system as a factor in your level of maturity, because in those contacts with the juvenile justice system you were given the opportunity to seek help, to address any issues that were present as a result of any mental health conditions such as the post traumatic stress disorder. And so even though you were young, you were presented with help, and you could have taken advantage of it. It's clear that you didn't.

In terms of the post traumatic stress disorder, that was diagnosed at age 14, and it was manageable with medication, according to the brief records that I was provided. But you stopped taking your medication, as indicated in the last doctor's note that was submitted to the Court.

I've considered your accomplishments in jail. Those are entitled to minimal weight.

And I've considered the support of your family and friends. It's certainly expected, it's understandable, and it is given some weight as well.

> And I've considered your statement of remorse, and also note that up until today, as [the prosecutor] has stated, there was no remorse expressed concerning your killing of Frances.
>
> I've taken all of these factors into account, Mr. Bassett, and what I am left with in this case with respect to Count 1, the murder of Frances Tapia, is that your behavior, your conduct, is evidence of a hardened heart, in my opinion, and I believe it's a personality trait that is extremely dangerous to the public.
>
> There is no presumptive sentence for first degree murder when the death penalty is not allowed, and in your case it is not allowed, so I approach this with an open mind. And after reading all these materials and reflecting on the evidence during trial, it is my opinion that the danger you present to the public cannot be addressed with anything less than a natural life sentence.
>
> So as to Count 1, it is the judgment and sentence of the Court that you be imprisoned in the state prison for the term of your natural life.
>
> As to Count 2, the circumstances are different, in my opinion, because of the facts of the case and what happened in that car that day. Giving full credit to all the aggravating and mitigating factors, I believe that the appropriate sentence, and it is the sentence imposed by the Court today, that you be imprisoned in the State prison for the term of your life with the possibility of parole after 25 years. That sentence is to run, however, consecutively to Count 1.

(App163-67.)

Accordingly, the trial court's discretionary sentencing of Bassett, including its consideration of his age, youth and attendant characteristics, how children are different than adults, and possible rehabilitation was "constitutionally sufficient" and satisfied *Miller* and no more is required. *See Jones*, 141 S. Ct. at 1313, 1316.

III. CONCLUSION

Contrary to Amicus's implication, *Roper*, *Graham*, and *Miller* do not entitle

Bassett to a sentence with the possibility of parole. *Miller* was clear that it was not imposing a categorical bar to life without parole sentences. Because Bassett already received a discretionary, individualized sentencing, where the trial court heard about his age, youth and attendant characteristics, imposition of his natural life sentence was constitutionally sufficient under *Miller*. Nothing in Amicus's brief or its rendition of four out-of-state, unrelated cases, changes this.

Respectfully Submitted December 30, 2022.

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ARIZONA SUPREME COURT

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A copy of Petitioner, State of Arizona's, Response to brief of Amicus Curiae Nazeem, Gibson, Abdullah, and Greenwood was electronically filed on December 30, 2022, using the AZTurboCourt e-filing system, and a copy was sent by email to:

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CERTIFICATE OF COMPLIANCE

Pursuant to this Court's November 1, 2022 order, ordering that responses to amicus briefs may not exceed 20 pages in length, the undersigned deputy certifies that the State's Response to the brief of Amicus Curiae Nazeem, Gibson, Abdullah, and Greenwood is 15 pages in length, and pursuant to Rule 31.21(g)(2), Arizona Rules of Criminal Procedure, certifies that the brief has an average of no more than 280 words per page, including footnotes and quotations, is proportionately spaced, uses 14 point Times New Roman typeface, is double spaced, and has margins of at least one inch on the top, bottom, and sides.

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