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* MARICOPA COUNTY PUBLIC DEFENDER**

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I. INTRODUCTION

Discretion. That is the key assumption in both *Miller v. Alabama*, 567 U.S. 460, 483 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). *See Jones v. Mississippi*, 141 S Ct. 1307, 1318 (2021). "[D]iscretionary sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." *Id.* *Jones* concluded, that "[d]iscretionary sentencing is both constitutionally necessary and constitutionally sufficient." *Id*. at 1313.

Discretion was undeniably exercised at Bassett's sentencing when the trial court considered his age and attendant circumstances in determining that a natural life sentence was appropriate for Bassett's murder of Tapia and a consecutive sentence of life with the possibility of parole after 25 years was appropriate for Bassett's murder of Pedroza. (App32-171.) Thus, his sentencing satisfied *Miller* and no more is required.

Amicus Maricopa County Public Defender's (MCPD) arguments, which largely repeat Bassett's arguments,[1] fail because they ignore the discretion that was

[1] The role of an amicus is to assist the Court and *not advocate* a particular party's position. *See* Ariz. R. Crim. P. 31.15, formerly Rule 31.25, 1998 comment ("an amicus curiae brief should assist the Court, not advocate a particular litigant's case."). MCPD goes well beyond its role as amicus. Indeed, MCPD's brief reads more like another responsive brief for Bassett. Thus, to the extent MCPD repeats

clearly exercised at Bassett's sentencing. First, MCPD's argument—that Bassett's natural life sentence was mandatory because parole was abolished—fails because it ignores the discretion that was undeniably exercised by the trial court in this case. Whether parole procedures were available did not affect the discretion that was exercised by the trial court here. The postconviction court rejected any argument that Bassett's natural life sentence was mandatory, instead finding the judge exercised discretion at sentencing. Bassett did not seek review of that determination, and nothing has changed since then to allow Respondent Judge to revisit that determination. Furthermore, this Court already rejected the argument that juvenile offenders' natural life sentences were mandatory. *See State v. Valencia*, 241 Ariz. 206, 208, ¶11 (2016) (petitioners' natural life sentences "were not mandatory.")

Second, *Montgomery*'s dictum regarding "irreparable corruption" and "transient immaturity," 577 U.S. at 208-09, was rejected by *Jones*. 141 S. Ct. 1311-21 (*Montgomery* only made *Miller* retroactive and did not add to *Miller*'s requirements.) This in turn abrogated *Valencia*, which was based on *Montgomery*'s dictum and expansion of *Miller*. 241 Ariz. at 209, ¶15 ("*Miller*, as clarified by *Montgomery*, represents a 'clear break from the past'" prohibiting a trial court from imposing "a natural life sentence on a juvenile convicted of first degree murder

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Bassett's arguments, responds directly to the State's arguments, and advocates for specific relief, this Court should not consider those arguments because they go beyond an amicus' proper role and unfairly function as a second responsive brief.

without distinguishing crimes that reflected 'irreparable corruption' rather than the 'transient immaturity of youth.'") Therefore, the basis of the State's concession (App214) no longer exists, and Respondent Judge abused her discretion in denying the State's motion to vacate and instead finding Bassett was entitled to an evidentiary hearing pursuant to *Valencia*.

II. ARGUMENT

A. The basis for the State's concession, that Bassett was entitled to an evidentiary hearing pursuant to *Valencia*, was no longer legally correct after *Jones*.

As a preliminary matter, throughout its brief, MCPD mischaracterizes the State's response to Bassett's 2017 successive PCR petition as a stipulation by which the State is bound. In its PCR response, the State "concede[d] that Defendant is entitled to an evidentiary hearing pursuant to *State v. Valencia*, 241 Ariz. 206 (2016), and Rule 32.8 of the Arizona Rules of Criminal Procedure." (App214.) In his PCR reply, Bassett did not characterize or treat the State's response as a stipulation. Rather, Bassett argued that he was entitled to resentencing, not an evidentiary hearing as conceded by the State. (App218-19.) Bassett contended that an evidentiary hearing would only be to consider whether Bassett's sentencing "satisfied the requirement in *Valencia* as to whether Bassett's crime shows 'permanent incorrigibility.'" (App218.) Bassett argued that at a resentencing, however, the court would determine "whether his crimes reflect irreparable

corruption or whether his natural life prison sentence is excessive because his crime reflects transient immaturity." (App218-19.) The postconviction court set the matter for a Rule 32 evidentiary hearing. (App221.)

After *Jones*, the State moved to vacate the evidentiary hearing, arguing that its concession based on *Valencia*, was no longer legally correct. (App223-45.) Specifically, the State argued that *Valencia*'s interpretation of *Montgomery*, as clarifying *Miller* and entitling defendants like Bassett to an opportunity to establish that his crime reflected transient immaturity and not irreparable corruption, was implicitly overruled by *Jones*. (*Id*.) Therefore, MCPD's characterization of the State's PCR response as a stipulation is not accurate. Also, MCPD's argument that parties are bound by their stipulations should not be considered by this Court because it both mischaracterizes the record and improperly creates, extends, or enlarges the issue beyond that argued by Bassett. *Town of Chino Valley v. City of Prescott*, 131 Ariz. 78, 84 (1981) (amicus "are not permitted to raise new issues and their briefs may not create, extend, or enlarge issues beyond those argued by the parties.").

Even if this Court views the State's concession as a stipulation, Respondent Judge's ruling, denying the State's motion to vacate, was still an abuse of discretion because Respondent Judge's interpretation of *Miller* and *Valencia* was erroneous. As set forth below, *Jones* clarified that *Miller* held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of

parole for juvenile offenders." 567 U.S. at 479. The key in *Miller* was discretionary sentencing because "[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features." 567 U.S. at 477.

To do this, *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* only made *Miller* retroactive and did not add to *Miller*'s requirements. 141 S. Ct. at 1311-21. This Court preemptively confirmed *Jones* in *State v. Soto-Fong*, 250 Ariz. 1, ¶¶19-23 (2020)—a case which Bassett and *all* amici supporting Bassett simply refuse to acknowledge.

Nothing in *Miller*'s holding, as narrowly construed by both *Jones* and *Soto-Fong*, entitles Bassett to an evidentiary hearing on collateral review to prove that his "crimes did not reflect irreparable corruption but instead transient immaturity." *Valencia*, 241 Ariz. at 210, ¶18. (Attachment.) Thus, the basis upon which the State's concession was made no longer existed after *Jones*. and was not binding on the State. *See e.g., Rutledge v. Ariz. Bd. of Regents*, 147 Ariz. 534, 550 (App.1985) (the trial court "may set aside a stipulation … where [] there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation.")

Furthermore, Respondent Judge went beyond simply denying the State's motion to vacate the evidentiary hearing pursuant to *Valencia*, when she found that

Bassett was entitled to an evidentiary hearing to present more information for, what Bassett and Respondent Judge deem, "adequate consideration of his youth and attendant characteristics" and "the weight required by *Miller*." Not only was that finding new, but it is not encompassed by the State's concession because neither *Miller* nor *Valencia* support that finding.

B. Bassett's natural life sentence was not mandatory as contemplated by *Miller*.

MCPD's argument that Bassett's natural life sentence was mandatory despite the "procedural oddity" of his sentence of life with the possibility of parole after 25 years imposed on Count 2 is not only inaccurate but completely ignores the discretion that was undeniably exercised by the trial court here. (Brief at 14.)

As set forth in Addendum C to the State's petition for review, and illustrated by this very case, the belief that parole was available was not an "oddity" but a common occurrence. As *Jessup v. Shinn*, 31 F. 4th 1262, 1267 n.1 (9th Cir. 2022), recognized, this "misunderstanding by the sentencing judge and everyone else involved in [Jessup]'s case was apparently common" and the "Arizona reporter is full of cases in which the sentencing judge mistakenly thought that he or she had discretion to allow parole." "A district court recently noted that, '[d]espite the elimination of parole, prosecutors continued to offer parole in plea agreements, and judges continued to accept such agreements and impose sentences of life with the possibility of parole.'" *Id* (Quoting *Viramontes v. Att'y Gen.*, 2021 WL 977170, at

*1 (D. Ariz. 2021). *See also Chaparro v. Shinn*, 248 Ariz. 138 (2020) (sentenced to "[l]ife without possibility of parole for 25 years" in 1996); *Shinn v. Arizona Bd. of Exec. Clemency/Freeman*, 2022 WL 17826459, at ¶¶8, 20 (2022) (the trial court, the defense, and the prosecutor believed that parole was available); *No Indeterminate Sentencing Without Parole*, 44 Ohio N.U. L. Rev. 263, 289 (2018) ("since 1994 the Arizona judiciary has sentenced more than two hundred defendants to life imprisonment with a possibility of parole after twenty-five or thirty-five years.")

Furthermore, MCPD's argument conflicts with this Court's express finding that Arizona juvenile offenders' natural life sentences were not mandatory. *See Valencia*, 241 Ariz. at 206, 208, ¶11 (although petitioners' natural life sentences amounted to life without the possibility of parole, they "were not mandatory.")

MCPD's reliance on *Chaparro*, 248 Ariz. 138, is misplaced. This Court referred to Chaparro's sentence of "[l]ife without possibility of parole for 25 years" as an illegally lenient sentence because by the time Chaparro was eligible to seek parole, there was no way to implement that sentence. *Id*. at ¶7. But unlike *Chaparro*, A.R.S. § 13-716 implemented parole procedures for juvenile offenders who were sentenced to life with the possibility of parole. (Like Bassett's sentence for Count 2.) Because Bassett could have received a release-eligible sentence, which became a parole-eligible sentence due to the subsequent passage of 13-716, Bassett's sentence for Count 2 was not an illegally lenient sentence. Thus, *Chaparro* expressly

does not apply to juveniles who have a parole option.

Moreover, MCPD's argument that Bassett's natural life was mandatory because parole had been abolished misses the point. As emphasized by *Jones*, the "key assumption in both *Miller* and *Montgomery* was that *discretionary* sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." 141 S. Ct. at 1318 (emphasis added).

Here, the record confirms beyond any doubt that Bassett's sentencer exercised discretion, guided by Arizona law, in sentencing Bassett to natural life for Tapia's murder in Count 1 and to life with the possibility of parole after 25 years for Pedroza's murder Count 2. (App166-67.) The availability of parole procedures in Title 41 when Bassett was sentenced pursuant to Title 13, did not affect the discretion that was clearly exercised by the trial court in this case or make Bassett's natural life sentence unconstitutional. Therefore, Respondent Judge's finding, and the court of appeals' conclusion in *State v. Wagner*, 253 Ariz. 201, ¶22 (App. 2022), that juvenile offenders' natural life sentences were mandatory simply because parole had been abolished in Title 41, were erroneous and should be reversed by this Court.

C. *Montgomery*'s dictum, upon which *Valencia*'s holding and MCPD's arguments are based, was rejected by *Jones* and *Soto-Fong*.

MCPD's repeated assertion that the Eighth Amendment still forbids life without-parole sentences for a juvenile whose crimes were the result of transient

immaturity fails for several reasons.[2] (Brief at 5, 6, 7, 11, 16.) First, that is not *Miller*'s holding. Nor is it a "substantive component" or "substantive guarantee" of *Miller*, as asserted by MCPD. (Brief at 7-10, 16.) *Miller* held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." 567 U.S. at 479. *Miller* then clarified "that holding is sufficient to decide these cases." *Id*. The guarantee in *Miller* was discretionary sentencing (which neither Alabama nor Arkansas had) because "[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features." 567 U.S. at 477. *Miller*'s conclusion further confirms that was *Miller*'s guarantee:

> *Graham*, *Roper,* and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By 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 this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

Id. at 489.

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[2] MCPD's asserts that Bassett is "entitled to make an as-applied challenge to Count 2." This Court cannot consider that assertion because the constitutionality of Bassett's sentence for Count 2 is not at issue. (Brief at 6.) Amicus "are not permitted to raise new issues and their briefs may not create, extend, or enlarge issues beyond those argued by the parties." *Town of Chino Valley v. City of Prescott*, 131 Ariz. 78, 84 (1981). This Court should base its "opinion solely on legal issues advanced by the parties themselves." *Ruiz v. Hull*, 191 Ariz. 441, 446 (1998).

The only mention of "transient immaturity" in *Miller* is in describing its prediction: "we *think* appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," especially "because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" 567 U.S. at 479. (emphasis added.) But a prediction is dicta, not a holding nor a "substantive component" or "substantive guarantee."

That prediction was part of the dicta that *Montgomery* used to rewrite and expand *Miller*'s holding. *See Montgomery*, 577 U.S. at 224-25 (Scalia, J., dissenting) (majority rewrites *Miller* by quoting "passages from *Miller* that assert such things as … 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'"). *See also Valencia*, 241 Ariz. at 211, ¶26 ("Searching in vain to find such a substantive rule in *Miller*, the Court instead created one in *Montgomery*.") (Bolick, J., concurring.) That rewrite and expansion in turn provided the basis for this Court's holding in *Valencia*, which *Wagner*, 253 Ariz. at ¶7, incorrectly endorsed.

In *Valencia*, this Court interpreted *Montgomery* as "clarifying" *Miller* and found *Miller* was a "clear break from the past" because "Arizona law, when Healer and Valencia were sentenced, allowed a trial court to impose a natural life sentence

on a juvenile convicted of first degree murder without distinguishing crimes that reflected 'irreparable corruption' rather than the 'transient immaturity of youth.'" 241 Ariz. at 209, ¶15. This Court found, "*Montgomery* noted that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility," but instead *held* that imposing a sentence of life without parole on 'a child whose crime reflects transient immaturity' violates the Eighth Amendment. 136 S. Ct. at 736." *Id*. at 210, ¶17 (emphasis added.) But, again, that was decisively **not** *Miller*'s holding.

By clarifying that *Montgomery* only made *Miller* retroactive and did not add to *Miller*'s requirements, *Jones* clarified that *Montgomery* **did not clarify** or expand *Miller*. In fact, *Jones* recognized its disagreement with the dissent's interpretation of *Miller* and *Montgomery*—the dissent believed the majority was "unduly narrowing *Miller* and *Montgomery*," and the majority believed the dissent "would unduly broaden those decisions." 141 S. Ct. at 1321. By rejecting *Montgomery*'s broad interpretation of *Miller*, *Jones* abrogated *Valencia*. *See Soto-Fong*, 250 Ariz. at 9, ¶32 ("This Court, of course, is bound to follow applicable *holdings* of United States Supreme Court decisions, but not mere dicta or other statements that allegedly bear on issues neither presented nor decided in such decisions.") (emphasis added).

1. Arizona's sentencing scheme satisfied *Miller*'s only requirement: that "a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular sentence."

Jones clearly held that *Miller* only requires "a sentencer follow a certain

process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence" and *Montgomery* only made *Miller* retroactive. 141 S. Ct. at 1311-21 (quoting *Miller*, 67 U.S. at 483.) In fact, this confirms the State's argument, which was rejected in *Valencia*, "that *Miller* bars mandatory sentences of life without parole and thus requires only that the sentencing court consider the juvenile's age as a mitigating factor before imposing a natural life sentence—as occurred in each case here." *Valencia*, 241 Ariz. at 29, ¶16. Because Arizona law required courts to consider age as a mitigating factor, A.R.S. § 13-701(E)(1), and to "look at [his] level of maturity, judgment and involvement in the crime" as part of an offender's young age, *State v. Greenway*, 170 Ariz. 155, 170 (1991), Arizona's sentencing scheme, when Bassett was sentenced, satisfied *Miller*, as narrowly construed by *Jones* and this Court in *Soto-Fong*.

The court of appeals seemingly recognized this when it recently found Arizona courts have applied *Jones* differently and "if not for the *Valencia* precedent, we would affirm the superior court's dismissal here because both the *Miller* and *Montgomery* requirements were met." *State v. Odom*, 2022 WL 4242815, at *1, ¶6 (Ariz. Ct. App. Sept. 15, 2022). Thus, contrary to MCPD, *Jones* and *Valencia* clearly do not align, predictively or otherwise. (Brief at 6.)

Any reliance on *Montgomery* beyond retroactivity, including *Montgomery*'s "clarification" of *Miller*, was rejected, not affirmed, by *Jones*. *See United States v.*

Briones, 18 F.4th 1170, 1176 (9th Cir. 2021) (rejecting petitioner's argument that "*Jones* left in place *Montgomery*'s dictum that LWOP is 'an unconstitutional penalty for...juvenile offenders whose crimes reflect the transient immaturity of youth' *i.e.*, 'for all but...those whose crimes reflect permanent incorrigibility.'"). Consequently, MCPD's repeated reliance on *Montgomery*'s language in footnote 2 of *Jones* provides no support for "its assertion.

MCPD incorrectly imputes *Montgomery*'s language to *Jones*. But footnote 2 simply quotes *Montgomery* and does not affirm or acknowledge what MCPD inaccurately characterizes as a "constitutional principle," "substantive component," or "substantive guarantee" of *Miller*.[3] (Brief at 8.) Indeed, *Jones* quoted *Montgomery* in footnote 2 for the proposition that "*Montgomery* then flatly stated that '*Miller* did not impose a formal factfinding requirement' and that 'a finding of

[3] Interestingly, in several cases pending with this issue, MCPD has repackaged its argument that transient immaturity is still part of the sentencing equation for juveniles, always relying on footnote 2 in *Jones*. For example, in *State v. Arias*, MCPD argued that *Valencia* announced, and *Jones* embraced, a "transient immaturity standard." And here, MCPD characterizes transient immaturity as a "constitutional principle," or a "substantive component" or "substantive guarantee" of *Miller*. (Brief at 5, 7-10, 16.) MCPD's persistent attempts to convince the court that transient immaturity is still a required determination in sentencing juveniles is understandable because, as Justice Thomas recognized in his *Jones*'s concurrence, "[w]ithout more, the fact that *Miller* was now retroactive did not help *Jones*, as he had already received the "individualized" hearing *Miller* required." 141 S. Ct. at 1324 (Thomas, J., concurring). But as set forth above, "transient immaturity," regardless of MCPD's characterization, is not part of *Miller*'s holding, as clarified by both *Jones* and *Soto-Fong*, and not required when sentencing juveniles.

fact regarding a child's incorrigibility is not required.'" That is not an affirmation or endorsement of transient immaturity.

In addition to *Jones*'s clarification of *Miller*'s and *Montgomery*'s narrow holdings, *Jones*'s explanation of what *Miller* **does not require** further refutes MCPD's assertion that *Jones* "reaffirmed" that the Eighth Amendment forbids life without-parole sentences for a juvenile whose crimes reflect transient immaturity. (Brief at 5, 11.) Implicit in MCPD's assertion, is a requirement that the trial court determine whether the juvenile's offender's crimes were the result of transient immaturity. But *Jones* explained that a sentencer is *not* required to find a juvenile was permanently incorrigible, make specific findings, provide "an on-the-record sentencing explanation," use magic words, or provide a checklist of its findings. 141 S. Ct. at 1319-21. Unless the record affirmatively reflects otherwise, the sentencer is "deemed to have considered the relevant criteria, such as mitigating circumstances enumerated in the sentencing rules." *Id*. *Jones*'s express holding that *Miller* did not impose a formal factfinding requirement and that *Montgomery* did not add to *Miller*'s requirements further demonstrates that MCPD's assertion regarding transient immaturity did not survive *Jones*. 141 S. Ct. at 1311, 1314, 1316, 1321.

2. Discretionary sentencing is constitutionally sufficient.

Jones concluded "a State's discretionary sentencing system is … constitutionally sufficient." *Id*. at 1313. *Jones* explained that 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*, 141 S. Ct. 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*'s conclusion that discretionary sentencing is "constitutionally sufficient" refutes MCPD's assertion that the Eighth Amendment requires a trial court to determine whether the juvenile offender's crimes were the result of transient immaturity.

A review of the sentencing practices in the 15 jurisdictions, which *Miller* cited as making "life without parole discretionary for juveniles," 567 U.S. at 484 n.10, further demonstrates that the Eighth Amendment does *not* require a sentencer to make a finding regarding whether the juvenile offender's crime reflects either "permanent incorrigibility" or "transient immaturity." In those jurisdictions, which were essentially found *Miller* compliant, there is no requirement for such findings. Rather, the discretionary sentencing in those jurisdictions was sufficient.[4] Indeed,

[4] *See e.g.*, Cal. Penal Code § 190.5(b) "The penalty for a defendant found guilty of murder in the first degree … who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, *at the discretion of the court*, 25 years to life." (Emphasis added.) Ind. Code Ann. § 35-50-2-3(b)(2) "*may be* sentenced to life imprisonment without parole." (Emphasis added.)

this confirms *Jones*'s conclusion that "discretionary sentencing system is … constitutionally sufficient" under *Miller*. *Jones*, 141 S. Ct. at 1313.

3. This Court narrowed its interpretation of *Miller* and *Montgomery* in *Soto-Fong*—confirming *Miller*'s narrow holding and rejecting *Montgomery*'s dicta.

If there is any doubt about *Jones*'s impact on Arizona and *Valencia*, *Soto-Fong* confirms that this Court narrowed its interpretation of *Miller* and *Montgomery* and preemptively confirmed *Jones* and its abrogation of *Valencia*. 250 Ariz. at 7, ¶¶19-23. Like *Jones*, this Court recognized "*Montgomery* muddied the Eighth Amendment jurisprudential waters with its construction of *Miller*," and found the "Supreme Court's Eighth Amendment jurisprudence concerning parole-ineligible life sentences for juveniles has left the nation's courts in a wake of confusion." *Id.* at 7, ¶¶21, 24 (citing *Montgomery*, 136 S. Ct. at 743) (Scalia, J., dissenting.)

This Court confirmed *Miller*'s holding, that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id*. at 7, ¶19 (quoting *Miller*, 567 U.S. at 479.) It also confirmed that *Miller* requires discretionary sentencing where "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* (quoting *Miller*, 567 U.S. at 489.) "To effectuate this directive, [*Miller*] held that a trial court must consider 'an offender's youth and attendant characteristics' before sentencing a juvenile to life without the possibility

of parole." *Id*. (quoting *Miller*, 567 U.S. at 483.)

Contrary to *Valencia*, and consistent with *Jones*, this Court agreed with Justice Scalia's dissent in *Montgomery*, that "*Miller* did not enact a categorical ban" and that *Miller*'s holding was narrow—"merely mandat[ing] that trial courts '*follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty.'" *Id*. at ¶¶22, 23 (citing *Montgomery*, 136 S. Ct. at 743 (Scalia, J., dissenting) and quoting *Miller*, 567 U.S. at 483). Citing Justice Bolick's concurrence in *Valencia*, this Court further agreed with Justice Scalia's criticism of *Montgomery*'s "majority for its reliance on dicta from *Miller* to rewrite its holding." *Id*. (Quoting *Valencia*, 241 Ariz. at 211 ¶26 (Bolick, J., concurring) ("Searching in vain to find such a substantive rule in *Miller*, the Court instead created one in *Montgomery*, reasoning that the unannounced rule that courts make a finding of 'irreparable corruption' before sentencing a juvenile offender to life imprisonment without parole was implicit in the earlier case.") (internal citation omitted)).

Though MCPD responds to many of the State's arguments, it does not dispute that *Soto-Fong* disavowed *Valencia* and confirmed *Jones*'s abrogation of *Valencia*. In fact, inexplicably, neither Bassett, nor any of the amici supporting Bassett, even cite *Soto-Fong*, much less dispute *Soto-Fong*'s agreement with Justice Scalia's dissent in *Montgomery* and implicit agreement with the State's argument that was rejected in *Valencia*. This is detrimental to all Bassett's and amici's arguments.

4. *Miller*'s holding is not dependent on the posture of the case.

MCPD's argument, that Bassett is still entitled to collaterally attack his natural life sentence after *Jones* because *Valencia* was a postconviction proceeding and *Jones* a resentencing proceeding, fails. (Brief at 9-11.) *Miller*'s holding does not depend on the procedural posture of the case. *Miller*'s holding, "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders," 567 U.S. at 479, applies equally regardless of the posture of the case. And *Miller*'s mandate, "that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence," is certainly not expanded on collateral review. The problem for Bassett is, after *Jones*'s clarification of *Miller* and *Montgomery*, *Miller* is no longer a significant change in the law applicable to Bassett that would probably overturn his natural life sentence. *See* Ariz. R. Crim. P. 32.1(g). Thus, he is not entitled to relief under Rule 32 or an evidentiary hearing pursuant to *Valencia* and Rule 32.8, as previously conceded by the State.

5. MCPD's argument, that the Arizona Constitution mandated Bassett's natural life sentence, exceeds the issue before this Court and is wrong.

Lastly, MCPD's claim that Bassett's natural life sentence was mandated by the Arizona Constitution cannot be considered by this Court because it exceeds the issue raised and argued by the parties. *See Town of Chino Valley*, 131 Ariz. at 84.

(Brief at 17-19.) This Court should decline to consider this new claim and base its "opinion solely on legal issues advanced by the parties themselves." *Ruiz v. Hull*, 191 Ariz. 441, 446 (1998).

Even if this Court considers this new claim, it is meritless because the Arizona Constitution does not mandate a natural life sentence for a juvenile. Article IV, Part 2, section 22(1) of the Arizona Constitution, cited by MCPD, provides that juveniles 15 years of age or older shall be prosecuted as adults for certain offenses. But it does not mandate natural life sentences for juveniles, which is the issue before this Court.

Furthermore, MCPD's argument that the "Arizona Constitution required the sentencing judge to sentence Mr. Bassett as if he were an adult" fails because it ignores A.R.S. § 13–701(E)(1) and A.R.S. § 13–703(G)(5), which require trial courts to consider age as a mitigating factor in determining the punishment for first-degree murder. It also ignores the requirement that Arizona courts not only consider an offender's young age but also consider the defendant's "1) level of intelligence, 2) maturity, 3) participation in the murder, and 4) criminal history and past experience with law enforcement," which was specifically acknowledged by the prosecutor in this case. (App106 (citing *State v. Clabourne*, 194 Ariz. 379 (1999)).) Moreover, MCPD's argument ignores Bassett's mitigation, which he presented through the lens of *Roper v. Simmons*, 543 U.S. 551 (2005)—a case which held that individualized sentencing where youth matters is required when sentencing juveniles and from

which *Miller*'s decision "flows straightforwardly" 567 U.S at 483.

III. CONCLUSION

This Court should clarify that discretionary sentencing is constitutionally sufficient and that neither a finding of permanent incorrigibility nor transient immaturity is required when sentencing a juvenile. This Court should also clarify that *Jones* abrogated *Valencia*'s holding and that *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." *Jones*, 141 S. Ct. at 1314-16, 1321. Bassett already received the type of discretionary, individualized sentencing required by *Miller*, as guided by Arizona law. Accordingly, Bassett is not entitled to a postconviction evidentiary hearing because he received all the consideration of his youth that *Miller*, as fairly and correctly interpreted by *Jones*, requires. Therefore, Respondent Judge erred as a matter of law and abused her discretion when she denied the State's motion to vacate the *Valencia* evidentiary hearing and dismiss Bassett's PCR petition and found that Bassett was entitled to an evidentiary hearing pursuant to *Valencia* to present more.

Respectfully Submitted December 30, 2022.

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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 **CERTIFICATE OF COMPLIANCE FOR STATE'S RESPONSE TO BRIEF OF *AMICUS CURIAE* MARICOPA COUNTY PUBLIC DEFENDER**

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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 Maricopa County Public Defender is 20 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.

Respectfully Submitted December 30, 2022.

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY: /s/ *Julie A. Done*
/s/ Julie A. Done
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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 **CERTIFICATE OF SERVICE FOR STATE'S RESPONSE TO BRIEF OF *AMICUS CURIAE* MARICOPA COUNTY PUBLIC DEFENDER**

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A copy of Petitioner, State of Arizona's, Response to brief of Amicus Curiae Maricopa County Public Defender 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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