IN THE
INDIANA SUPREME COURT

Case No. 22A-CR-457

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| Nickalas James Kedrowitz,<br>Appellant (Defendant below), | ) | Appeal from the<br>Ripley Circuit Court<br>Case No. 69C01-1909-MR-1 |
| v. | ) | Hon. Ryan J. King, Judge |
| State of Indiana,<br>Appellee (Plaintiff below). | ) | |

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# APPELLANT'S PETITION TO TRANSFER

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## QUESTIONS PRESENTED ON TRANSFER

1. Does a circuit court gain subject-matter jurisdiction over "delinquent acts" after a juvenile court's waiver, in light of this Court's reasoning in *State v. Neukam*, 189 N.E.3d 152 (Ind. 2022)?

2. Does the proportionate penalties provision in Article 1, Section 16 of the Indiana Constitution demand consideration of personal attributes of the defendant?

3. May a defendant challenge a portion of the penal code as applied to a class of individuals under Article 1, Section 18 of the Constitution?

4. Did the Court of Appeals use an erroneous standard to analyze the appropriateness of the 100-year aggregate sentence of a child with cognitive limitations?

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## BACKGROUND AND PRIOR TREATMENT OF ISSUES ON TRANSFER[1]

Nickalas Kedrowitz ("Nick") is serving a 100-year aggregate sentence for murder, stemming from the 2017 deaths of his two half-siblings. At the time of the acts alleged, Nick was thirteen-years-old, had cognitive deficits, and was mentally ill. Nick asks that this Court grant transfer to review both whether the adult criminal court had jurisdiction over his case, and whether his sentence is constitutional given his youth and cognitive state.

In September 2018, the State filed a delinquency petition alleging acts that would be murder if committed by an adult, (App. Vol. II, p. 54–55), and also sought waiver of jurisdiction from juvenile court to the circuit court, (App. Vol. II pp. 81–82). The case arose from statements that Nick killed his siblings to "free[] them from hell" and "protect" them from his mother's fiancé, who Nick also reported had physically abused him. (Tr. Vol. 8, p. 35–36; Vol. 9, p. 21; Vol. 10, pp. 206–08; App. Vol. II, p. 99). However, Nick also expressed that he expected his siblings to come back, even physically searching the house for them until Nick's aunt told him their death was permanent. (Tr. Vol. 8, pp. 35–37, 43). Nick was admitted to a hospital for mental health treatment shortly after these events, where he remained for half a year until this case was initiated. (Tr. Vol. 2, pp. 6–8; Vol. 9, pp. 228–29).

Nick challenged his competency to be tried, prompting a series of evaluations by mental health experts. (App. Vol. II, pp. 79–80, 178–79; Tr. Vol.

[1] The Brief of Appellant contains a more comprehensive statement of facts.

2, pp. 78–79, 93–94, 96–103, 109–113, 118, 185). Although their competency findings varied, *id.*, most evaluators opined that Nick suffered from one or more psychiatric conditions—for which he was prescribed antipsychotic medications—and most agreed he had borderline intellectual functioning at best. (Tr. Vol. 2, pp. 103–05, 118, 152–54, 240–41; Vol. 3 pp. 22, 25, 27, 33, 91, 93–95, 98–99).

The juvenile court found Nick competent to stand trial. (App. Vol. II, pp. 218–23). It also waived its jurisdiction. (App. Vol. III, pp. 2–7). Nick was tried for murder in the circuit court, where a jury found him guilty on both counts. (App. Vol. IV, pp. 155–57). At sentencing, the court weighed Nick's age and immaturity, his "low cognitive abilities," and his psychiatric diagnoses, as mitigating factors. (App. Vol. IV, pp. 232–233). But it factored the aggravating circumstances more heavily, and sentenced Nick to consecutive 50-year prison terms, for an aggregate 100-year sentence. *Id.* at 233.

Nick appealed, arguing *inter alia*, that (1) the circuit court lacked subject-matter jurisdiction over Nick's case because his conduct was delinquent, not criminal, which this Court had identified as a gap that "only the legislature can close" in *State v. Neukam*, 189 N.E.3d 152, 153 (Ind. 2022); (2) his sentence was disproportionate in violation of Article 1, Section 16 of the Indiana Constitution considering his youth and other factors; (3) *de facto* life-without-parole sentencing schemes for juveniles like him violated Article 1, Section 18 of the Indiana Constitution; and (4) his sentence was otherwise inappropriate given his age and surrounding circumstances.

The Indiana Court of Appeals affirmed the trial court's judgment in a published opinion. *Kedrowitz v. State*, 199 N.E.3d 386 (Ind. 2022). The court rejected Nick's jurisdictional challenge, stating that the *Neukam* ruling was inapplicable to his case. *Id.* at 403–04. The court declined to address the merits of either constitutional sentencing issue. It opined there was "no authority for the proposition that" a court may consider a defendant's personal characteristics in its sentence proportionality analysis under Article 1, Section 16. *Id.* at 409. The court ruled that Article 1, Section 18 was an admonition only to the legislature, about the entire penal code, so Nick's sentencing challenge was "not cognizable." *Id.* at 409–10. The court also concluded that Nick's sentence was appropriate, citing the nature of the offense and other alleged conduct the circuit court never considered, but weighing no mitigating factors. *Id.* at 407–08.

Nick timely petitioned for rehearing; the appellate court denied. He now asks this Court to grant transfer.

## ARGUMENT

### I. The Court of Appeals erred in holding that the circuit court had subject-matter jurisdiction over Nick's case and rejecting this Court's reasoning in *Neukam*.

Last year, this Court announced that "a circuit court has jurisdiction over only 'criminal cases'. And a delinquent act by a juvenile cannot 'be' a crime because it 'would be' a crime only if committed by an adult. Thus, under the relevant statutes, circuit courts lack jurisdiction over conduct by juveniles."

*Neukam*, 189 N.E.3d at 156. The same is true in Nick's case. [2] In concluding that the adult court had jurisdiction merely because the juvenile court waived it, *Kedrowitz*, 199 N.E.3d at 404, the Court of Appeals failed to meaningfully contend with the textualist and separation of powers principles that "required[d]" this Court to hold as it did. The appellate court's assumption that the conduct underlying Nick's charges could simultaneously be "delinquent" and "criminal" is illogical and irreconcilable with *Neukam*.

Nick was thirteen years old at the time of the alleged acts, and fifteen when the State filed a delinquency petition. The Indiana juvenile code defines a "delinquent act" as one committed by a child under eighteen "that *would be* an offense *if* committed by an adult." *Neukam*, 189 N.E.3d at 154 (quoting Ind. Code § 31-37-1-2(1)) (emphasis added). Consequently, the juvenile court had "exclusive original jurisdiction" over Nick's proceedings. Ind. Code §§ 31-30-1-1(1); 31-37-1-1; *see also D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020) ("[A] juvenile court has 'exclusive' subject matter jurisdiction over proceedings in which a 'child' is alleged to be delinquent.").

The circuit court, on the other hand, had no jurisdiction at all. Indiana circuit courts have jurisdiction over "criminal" proceedings, but not "delinquent"

[2] This Court decided *Neukam* during Nick's appeal. Nick contested waiver in the juvenile court, the parties addressed *Neukam* in their briefs to the Court of Appeals, and the Court of Appeals factored *Neukam* into its jurisdiction decision. Thus, to the extent *Neukam* stated a new rule, it applies retroactively. *See Smylie v. State*, 823 N.E.2d 679, 687 (Ind. 2005) ("It is firmly established that, 'a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases . . . pending on direct review or not yet final . . . .'").

ones. Ind. Code § 33-28-1-2(a)(1). And the Indiana Code defines a "crime" disparately from a "delinquent act." Ind. Code §§ 33-23-1-4; 35-31.5-2-75; *see also Neukam*, 189 N.E.3d at 154 ("The phrase 'would be [a crime]' suggests a delinquent act is not a crime—and in fact 'would be' a crime *only if an adult did it*—in which case, it would no longer be a delinquent act . . . .") (emphasis added).

The *Neukam* holding turned on this reasoning. There, after distinguishing "delinquent" from "criminal" acts, this Court held concerning transfer that neither the juvenile court nor the circuit court had jurisdiction over acts a then-twenty-two-year-old had committed before age eighteen. *Id.* at 152–57. This Court stressed that the juvenile court alone had jurisdiction over the case when the acts occurred, but it had lost that jurisdiction when the defendant reached age twenty-one. *Id.* at 153–54. Yet, nothing in the applicable statutes conferred the circuit court jurisdiction over delinquent acts after the defendant aged out of juvenile court. *Id.* at 156.

Correspondingly, nothing in the statutes applicable to Nick's case conferred the circuit court jurisdiction over it. Indisputably, the conduct alleged in Nick's case was "delinquent," and the juvenile court had original jurisdiction—after all, the State filed a delinquency petition there. The juvenile court waived its jurisdiction. But waiver alone did not grant jurisdiction over *delinquent* acts to a separate court that, by law, only may preside over *criminal* ones. Ind. Code § 33-28-1-2(a)(1); *see also Neukam*, 189 N.E.3d at 156.

That Nick's case involved waiver rather than transfer does not alter this calculation; the two statutes utilize parallel language. *See* Ind. Code § 31-30-3-4 (conditioning a juvenile court's exercise of waiver on whether a child is accused of an act that "would be" murder "if" an adult had committed it). And as this Court observed, "[t]he effect of waiver is a criminal court may then exercise its own jurisdiction. But it cannot do so without jurisdiction over the alleged conduct in the first place." *Neukam*, 189 N.E.3d at 157. Furthermore, the Indiana Legislature knows how to convey circuit court jurisdiction over delinquent conduct. For instance, it explicitly granted criminal courts "concurrent original jurisdiction with the juvenile court" for the limited purpose of extradition. Ind. Code § 31-30-1-9. But it did not do so for waiver.

The appellate court apparently declined to apply *Neukam's* plain reading and sound interpretation of the statutory text because this Court has upheld convictions of waived juveniles as valid in the past. *Kedrowitz*, 199 N.E.3d. at 402. But this Court has also explained that "on matters of jurisdiction . . . precedent does not trump a statute." *Neukam*, 189 N.E.3d at 156. Furthermore, "'because that's the way we've always done it' is a poor excuse—the merits of stare decisis notwithstanding—for continuing to do something *wrong*." *Fry v. State*, 990 N.E.2d 429, 442 (Ind. 2013). This Court recognized that its decision implicated "far-reaching policy concerns" and "questions about circuit-court jurisdiction," *Neukam*, 189 N.E.3d at 157, notwithstanding past precedent. Transfer is necessary to resolve this issue.

## II. This Court should assert that Article 1, Section 16 of the Indiana Constitution requires consideration of both the offense and the defendant.

Even if the circuit court had jurisdiction, the Court of Appeals' conclusion that the proportionate penalties provision of Article 1, Section 16 precludes consideration of the defendant's characteristics was wrong. *See Kedrowitz*, 199 N.E.3d at 409. Any proportionality review that omits the defendant's personal characteristics falls short. And, as here, where a child received effectively a life-without-parole sentence, accounting for his personal characteristics is the only way to ensure that sentence passes constitutional muster.

The Indiana Constitution prohibits cruel and unusual criminal punishments, *and also* guarantees proportional ones. Ind. Const. art. I, § 16. This proportionality guarantee, as this Court recognizes, makes Article 1, Section 16 textually and substantively broader than its federal analogue the Eighth Amendment. *Knapp v. State*, 9 N.E.3d 1274, 1289 (Ind. 2014); *see also* U.S. Const. amend. VIII (prohibiting "cruel and unusual punishments"). Reviewing courts are responsible for enforcing Article 1, Section 16 accordingly. *Clark v. State*, 561 N.E.2d 759, 765 (Ind. 1990) (citing *Cox v. State*, 181 N.E. 469, 472 (Ind. 1932)).

But the Eighth Amendment requires consideration of punishment in light of both the offense *and* the defendant. *Miller v. Alabama*, 567 U.S. 460, 469 (2012). Using this standard, the U.S. Supreme Court has eradicated the death penalty for youth under 18, *Roper v. Simmons*, 543 U.S. 551 (2005), and for

individuals with cognitive deficits, *Atkins v. Virginia*, 536 U.S. 304 (2002); barred juvenile life without parole for nonhomicide offenses, *Graham v. Florida*, 560 U.S. 48 (2010); and ended mandatory juvenile life without parole, *Miller*, 567 U.S. 460 (2012). In other words, the narrower Eighth Amendment demands consideration of defendant-specific factors absent an express proportionality requirement. Article 1, Section 16, with its added proportionate penalties provision, must surpass that floor. *See, e.g., Knapp*, 9 N.E.3d at 1289 ("The Eighth Amendment's bar on 'cruel and unusual' punishments has been held to implicitly prohibit certain 'grossly disproportionate punishments.' . . . But our Constitution by its terms *expressly* requires proportionality[.]") (citation omitted).

The appellate court's interpretation of proportionality as omitting a defendant's characteristics belies Article 1, Section 16's breadth. It also undermines the fact that rehabilitation is the "primary goal" of punishment under Indiana's constitution, and that courts must consider "unique factors" that support that objective. *Abercrombie v. State*, 417 N.E.2d 316, 320 (Ind. 1981). For young people like Nick, these considerations are particularly crucial because "children are constitutionally different from adults in their level[s] of culpability." *Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016). Young peoples' diminished blameworthiness and high capacity for change as compared to that of adults, "counsel against irrevocably sentencing them to a life in prison." *Miller*, 567 U.S. at 480.

The science-based reasoning that guided the Supreme Court's youth sentencing decisions is well accepted by this Court. *See*, *e.g.*, *State v. Stidham*, 157 N.E.3d 1185, 1195–96 (Ind. 2020). And it applies broadly with regards to punishment for children. *McKinley v. Butler*, 809 F.3d 908, 910 (7th Cir. 2016); *Wilson v. State*, 157 N.E.3d 1163, 1182 (Ind. 2020).[3] Furthermore, as this Court has noted:

> the fact that [an] appellant's sentence falls within parameters affixed by the legislature does not relieve this Court of the constitutional duty to review the duration of appellant's sentence as it is possible for the statute under which appellant is convicted to be constitutional, and yet be unconstitutional as applied to appellant in this particular instance.

*Clark*, 561 N.E.2d at 765; *see also Best v. State*, 566 N.E.2d 1027, 1032 (Ind. 1991) (per curiam) (holding that the habitual offender statute was unconstitutional as applied to appellant, based on appellant's individual criminal history). And sentences ordered under valid statutes nevertheless are unconstitutionally lengthy if they "shock the public sentiment and violate the judgment of a reasonable people." *Cox*, 181 N.E. at 472. Nick's 100-year sentence does just that.

A seismic shift has occurred since this Court last addressed juvenile life sentences. *See Conley v. State*, 972 N.E.2d 864, 877 (Ind. 2012) (holding that

[3] This Court has addressed youth in its appropriateness analyses under Appellate Rule 7(B). *See*, *e.g.*, *Stidham*, 157 N.E.3d 1185, 1195–96 (Ind. 2020) (reducing a sentence based on *Miller* factors). But Rule 7(B) is not a constitutional provision, and does not bind sentencing courts.

juvenile life-without-parole did not violate Article 1, Section 16, observing that "the overwhelming majority [of states] provide[d] for the possibility of LWOP sentences to individuals under the age of eighteen"). Today, most states either ban juvenile life without parole, or have no one serving that sentence. The Campaign for the Fair Sentencing of Youth, *States that Ban Juvenile Life Without Parole for Children* (last updated February 10, 2023), https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole. Moreover, some state high courts have held that *de facto* life sentences like Nick's trigger Eighth Amendment protections. *See, e.g., State v. Booker*, 656 S.W.3d 49 (Tenn. 2022); *People v. Buffer*, 137 N.E.3d 763 (Ill. 2019); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013). In other words, society highly disfavors juvenile sentences that prevent the "meaningful opportunity to obtain release." *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 75).

And recall that Nick was no ordinary young person. He also had cognitive impairments that rendered him the functional equivalent of a seven- or eight-year-old child. (Tr. Vol. 3, pp. 22, 25, 27, 94; Vol. 2, pp. 103–05, 152–54, 163). Furthermore, his crimes occurred before his mental health was evaluated and addressed. A sentence under these circumstances that leaves a child no hope of demonstrating rehabilitation shocks the conscience, and this Court should grant transfer to review it.

## III. This Court should hold that defendants have standing to bring categorical challenges, at minimum, under Article 1, Section 18.

The appellate court incorrectly rejected Nick's Article 1, Section 18 claim as an unreviewable "fact-specific challenge[]" to a "particularized, individual application[]" of the provision. *Kedrowitz*, 199 N.E.3d at 409 (quoting *Ratliff v. Cohn*, 693 N.E.2d 530, 542 (Ind. 1998)). Not true. Because juveniles are the class most amenable to reformation, a sentencing scheme that fails to place important restrictions on juvenile sentencing undermines the objective of Article 1, Section 18. Nick has standing bring this challenge.

Article 1, Section 18 demands that principles of reformation ground the penal code. *See Hunter v. State*, 676 N.E.2d 14, 17 (Ind. 1996) (recognizing this section as a constitutional "mandate[]"); *Parsley v. State*, 401 N.E.2d 1360, 1361–62 (Ind. 1980) (stating that the legislature is "bound to act in accordance with" Article 1, Section 18). A statutory scheme that "forswears *altogether* the rehabilitative ideal," *Taylor v. State*, 86 N.E.3d 157, 166 (Ind. 2017) (citation omitted), is unconstitutional. And a bar on challenges to the penal code as applied to a class of people renders Article 1, Section 18 practically unenforceable.

By rejecting Nick's categorical challenge as "not cognizable," (*Kedrowitz*, 199 N.E.3d at 409), the appellate court flouted both the judiciary's "role as guardian of the constitution," *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996) (citation omitted), and Section 18's historic concern for rehabilitation of children. Characterizing Article 1, Section 18 as "an admonition to the

legislative branch" (*Kedrowitz*, 199 N.E.3d at 409 (cleaned up)), does not extinguish courts' responsibility to ensure the legislature's compliance with the section's mandate. A constitutional limit on the legislature's power must leave the courts a role to play in its enforcement.

The appellate court's ruling to the contrary conflicts with this Court's prior decisions. *Ratliff*, 693 N.E.2d 530, which the appellate court cited as support for its conclusion, does not condone such a vacuous interpretation of Article 1, Section 18. Although this Court acknowledged judicial separation from the legislature, it also clarified that a categorical challenge to the placement of juveniles in adult prisons was "not [ ] fact-specific." *Id.* at 542 n.19 (citing *Hunter*, 676 N.E.2d 14). Furthermore, in *Hunter*, this Court reviewed a defendant's claim on the merits even though the individual only challenged a portion of the penal code. 676 N.E.2d at 16–17. These cases affirm that Article 1, Section 18 binds both the legislature and the courts. *See also Davis v. State*, 267 N.E.2d 63, 67 (Ind. 1971) (holding that increasing the defendant's sentence after revoking his suspended sentence "would imply adherence to a philosophy of vindictive justice in clear violation of [Section 18]").

Moreover juveniles, more than any other category of Hoosier, have a special claim to Article 1, Section 18's protection against laws that disregard its reformative mission. Delegates to the 1850 Constitutional Convention adopted Section 18 amid vocal "concern with the fate of youthful offenders." *Hunter*, 676 N.E.2d at 16 (citing proceedings of the constitutional convention). Given that

reformation of youth is embedded in the constitution, principles of adolescent development—as accepted by this Court and throughout this country—should inform the sentencing laws. *Cf. Cox v. State*, 181 N.E. 469, 470 n.1 (Ind. 1932) (recognizing that Section 16's prohibition on "[c]ruel and unusual punishments" is "progressive" and "acquire[s] wider meaning as public opinion becomes enlightened"). Sentences that deny young people the possibility for release in their lifetime disregard the reality that they possess "greater prospects for reform" than adults. *Stidham*, 157 N.E.3d at 1196 (quoting *Miller*, 567 U.S. at 471). Transfer is warranted.

## IV. The Court of Appeals applied a higher bar than this Court advanced in deciding that Nick's 100-year sentence is appropriate.

After bypassing the constitutionality of Nick's sentence, the Court of Appeals unduly minimized Nick's youth and cognitive impairments when it deemed his sentence appropriate. *Kedrowitz*, 199 N.E.3d at 408. The court reviewed both the offenses and Nick's character as if he was a neurotypical adult and gave excessive weight to the aggravating factors, thereby departing from this Court's usual consideration of mitigating factors in juvenile cases on review. For Nick, this approach rendered relief nearly impossible, a result this Court worked to overcome a decade ago.

Appellate Rule 7(B) permits reviewing courts to revise a defendant's sentence according to the court's "collective sense of what is appropriate." *Taylor*, 86 N.E.3d at 165 (cleaned up). The rule is flexible, allowing for independent examination of the unique character of a defendant. *See* App. R. 7(B).

Accordingly, courts may depart from prior findings on aggravating and mitigating factors. *Stidham*, 157 N.E.2d at 1195.

The Court has taken advantage of this flexibility in its review of juvenile sentences, including similar youth-related factors to those highlighted in *Miller*, *Roper*, and *Graham*. *Stidham*, 157 N.E.2d at 1193–94. Thus, this Court grounds its appropriateness review in the assumption that juveniles are less culpable and less deserving of the harshest of sentences. *See Id.* Consequently, this Court has readily reduced lengthy sentences of youthful defendants after affording additional weight to the mitigating qualities of youth. *See*, *e.g.*, *Stidham*, 157 N.E.3d at 1195–98; *Carter v. State*, 711 N.E.2d 835, 842 (Ind. 1999) (citing *Walton v. State*, 650 N.E.2d 1134, 1137 (Ind. 1995)).

Furthermore, the 7(B)-review standard has become even more malleable in the last decade. The current "appropriateness" standard arose in 2003, from this Court's concern that the previous rule—only permitting modification if a sentence was "manifestly unreasonable"—was so narrow and exclusionary that it risked impinging on defendants' constitutional right to appeal. *Id.* at 1192–93. The current measure affirmatively authorizes revision of sentences when "certain broad conditions are satisfied." *Neale v. State*, 826 N.E.2d 635, 639 (Ind. 2005).

The Court of Appeals's review here resembled the old, manifest unreasonableness standard than it did the current, broader inappropriateness standard. The court heavily weighed the offenses themselves, *Kedrowitz*, 199 N.E.3d at 408, without considering the nature of Nick's conduct from his

perspective at the time—a child who was developmentally even younger than his biological age, and whose mental health had suffered.

Furthermore, the nature of the offenses is just part of the equation. Youth is heavily mitigating. *See Taylor*, 86 N.E.3d at 166–67 (recognizing the significant mitigating weight of youth even with respect to "heinous and senseless crimes"). And rightly so, because young people have a high capacity for change over time. Here, the Court of Appeals adopted the trial court's finding that the offense outweighed any other factor, even adding aggravating factors on its own. *See Kedrowitz*, 199 N.E.3d at 408 (recounting alleged acts that appeared nowhere in the original sentencing order). Yet it did not mention Nick's youth, and it rejected mitigating facts that were tied to it. *Id.* at 407–08.

For instance, the court discounted Nick's lack of legal system history because he was not "a person who had lived a law-abiding life for many decades." *Kedrowitz*, 199 N.E.3d at 408. Of course he wasn't. He had only been alive for thirteen years; nonetheless, this was his only conviction and it was mitigating. The court also faulted Nick for not taking advantage of "ample opportunity to reflect" on his actions, and noted he had "observe[d] the pain he had caused to the rest of the family." *Id.* But these attributes reflect the precise characteristics that this Court recognizes make youth less culpable than adults: their underdeveloped maturity and sense of responsibility, along with "a still evolving character." *Stidham*, 157 N.E.3d at 1193 (cleaned up). The court also should have considered these factors in tandem with Nick's cognitive delay, and his poor

mental health, at a time when even "normal" adolescents are still developing. *See*, e.g., *Weeks v. State*, 697 N.E.2d 28, 30 (Ind. 1998) (weighing mental illness as a mitigating factor in sentencing). This Court should grant transfer.

## CONCLUSION

For the above reasons, Nick Kedrowitz asks that this Court grant his transfer petition, and vacate his convictions. Alternatively, he asks that this Court reduce his sentence to a term-of-years that complies with the Indiana Constitution, and allows him a meaningful opportunity to build a life outside of prison walls.

Respectfully submitted,

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**CERTIFICATE OF WORD COUNT**

I verify that this Appellant's Petition to Transfer, excluding cover information, table of contents, table of authorities, signature block, certificate of service, and word count certificate, contains no more than 4,200 words.

*/s/ Mark K. Leeman*
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**CERTIFICATE OF SERVICE**

I certify that on March 13, 2023, I filed the forgoing document using the Indiana E-Filing System ("IEFS"). I further certify that that on the same day I served the foregoing document upon the following using IEFS:

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