

In the  
Indiana Supreme Court

Nickalas James Kedrowitz,  
Appellant(s),

v.

State Of Indiana,  
Appellee(s).

Court of Appeals Case No.  
22A-CR-00457

Trial Court Case No.  
69C01-1909-MR-1

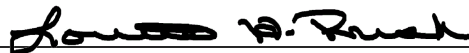
Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 6/28/2023.

FOR THE COURT



Loretta H. Rush

Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.

Rush, C.J., dissents from the denial of transfer with separate opinion in which Goff, J., joins.

## **Rush, Chief Justice, dissenting.**

Both the Eighth Amendment to the United States Constitution and Article 1, Section 16 of the Indiana Constitution prohibit cruel and unusual punishments, including those that are disproportionate to the offense. U.S. Const. amend. VIII; Ind. Const. art. 1, § 16; *see, e.g., Graham v. Florida*, 560 U.S. 48, 59 (2010). Though these provisions contain different language, we have held “the protections are the same.” *Conley v. State*, 972 N.E.2d 864, 879 (Ind. 2012). Yet, this case illustrates that juvenile offenders like Nickalas Kedrowitz currently have less protection under our Constitution. Transfer is needed to rectify this gap. *See* Ind. Appellate Rule 57(H)(2), (5).

Kedrowitz invoked Article 1, Section 16 in arguing that his 100-year sentence—imposed for heinous crimes he committed as a thirteen-year-old—is unconstitutional. The Court of Appeals rejected that argument because it was based on only his personal characteristics. *Kedrowitz v. State*, 199 N.E.3d 386, 409 (Ind. Ct. App. 2022). But in the last two decades, the United States Supreme Court has issued a series of decisions recognizing that a juvenile’s characteristics—youth and its distinctive attributes—matter when determining whether a sentence violates the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551, 570–74 (2005); *Graham*, 560 U.S. at 76; *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016); *Jones v. Mississippi*, 141 S. Ct. 1307, 1314 (2021). While we have acknowledged this shift when reviewing a juvenile’s sentence under Appellate Rule 7(B), *see, e.g., State v. Stidham*, 157 N.E.3d 1185, 1193–94 (Ind. 2020), we have not done so under Section 16.

Thus, by denying transfer, we pass up an important opportunity to clarify that, consistent with Eighth Amendment precedent, a juvenile’s characteristics matter when considering whether their sentence violates Article 1, Section 16. And we also pass up an important opportunity to consider whether Kedrowitz’s 100-year sentence—a de facto sentence of life without parole—passes constitutional muster. In recent years, several state supreme courts have found that shorter term-of-years sentences imposed on juveniles violate their states’ analogous constitutional provisions. *See, e.g., State v. Kelliher*, 381 N.C. 558, 873 S.E.2d 366, 370

(2022); *People v. Stovall*, 510 Mich. 301, 987 N.W.2d 85, 94–95 (2022). We should determine whether Article 1, Section 16 requires a similar result.

For these reasons, I respectfully dissent from the Court's decision to deny transfer.

Goff, J., joins.