

Nickalas James Kedrowitz-Appellant
Appellant’s Reply Brief in Support of Transfer

IN THE
INDIANA SUPREME COURT

Case No. 22A-CR-457

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

APPELLANT’S REPLY BRIEF IN SUPPORT OF TRANSFER

Andrea Lewis Hartung (8759-95-TA)
Roderick & Solange
MacArthur Justice Center
160 East Grand Avenue, 6th Floor
Chicago, IL 60611
(312) 503-0913
alewishartung@macarthurjustice.org

Jennifer Joas (20186-49)
Attorney at Law
413 East Main Street
Madison, Indiana 47250
(812) 265-1616
jjoas@madison-attorney.com

Benjamin Gunning (8760-95-TA)
Roderick & Solange
MacArthur Justice Center
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3434
ben.gunning@macarthurjustice.org

Mark K. Leeman (29109-09)
Leeman Law Offices
412 East Broadway
Logansport, Indiana 46947
(574) 722-3881
markleeman@leemanlaw.com

Attorneys for Appellant

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ARGUMENT

I. Criminal Courts Lack Jurisdiction Over Delinquent Acts.

This Court recently observed that “a delinquent act by a juvenile cannot ‘be’ a crime because it ‘would be’ a crime only if committed by an adult.” *State v. Neukam*, 189 N.E.3d 152, 156 (Ind. 2022). It held that by statute the criminal court lacked jurisdiction over the defendant’s delinquent acts. *Id.* at 157. Identical language is at issue here, Pet. 9-10, and the same logic establishes that the waiver statute did not give the criminal court jurisdiction over Nick’s case.

The State notes that, pre-*Neukam*, this Court affirmed convictions in waived cases “without ever questioning the existence of subject matter jurisdiction in the criminal court.” Opp. 8-9. It expresses concern about nullifying the waiver statutes. Opp. 9, 12. This Court identified these jurisdictional wrinkles after analyzing the statutory definitions, but correctly noted that jurisdictional gap-filling is for the legislature, not the courts. *Neukam*, 189 N.E.3d at 153, 157. A parallel gap remains here.¹

II. The Proportionality Guarantee Encompasses the Individual.

Proportionality review inherently accounts for individual characteristics. The State’s argument that “nature of the offense” and “offender” are entirely separate, and corresponding belief that only this Court’s review and revise

¹ This argument, and the delinquent-act definition, exclude direct-file cases. *Id.* at 156.

authority may address the latter, Opp. 12-13, are inconsistent with the Indiana Constitution itself.

Constitutional interpretation begins with the text, but also considers “the context of the history surrounding its drafting and ratification” and “the constitution’s “purpose and structure.” *Embry v. O’Bannon*, 798 N.E.2d 157, 160 (Ind. 2003) (citation omitted).

Historically, the Framers prohibited cruel and unusual punishments *and* guaranteed proportionate ones. Ind. Const. 1816 art. 1, §§ 15-16. They further demanded a penal code founded on reform rather than “vindictive justice,” *Id.* art. 9, § 4, and sought to rehabilitate youthful offenders. Pet. 17-18. Following ratification, the legislature empowered juries to sentence defendants under age 21 to county jail instead of prison, regardless of the offense, further evidencing the importance of individual characteristics like youth. 7 R.S. § 58 (1852); *Barker v. State*, 48 Ind. 163, 167-68 (1874).

Structurally, Article 16 is more protective than the Eighth Amendment. Pet. 12. Federal proportionality review for juveniles requires consideration of the offender alongside the offense. Pet. 12-13. Because federal law presents a floor, not a ceiling, Section 16 must require at least the same. *Id.*

Disputing none of these facts, the State erroneously argues that Nick’s Article 16 claim fails under settled law. Opp. 16. Indeed, this Court does review the offender with the offense. Pet. 14. The U.S. Supreme Court has not addressed

de facto juvenile life sentences. *Wilson v. State*, 157 N.E.3d 1163, 1174-76 (Ind. 2020); Pet. 14. Nor has this Court analyzed the issue under Section 16. *Id.*

But to the extent this Court has previously applied Section 16 narrowly, “*stare decisis* does not compel [its] adherence to [its] own former decisions” on “grave” constitutional matters. *A.B. v. State*, 949 N.E.2d 1204, 1224 (Ind. 2011) (Dickson, J. concurring) (cleaned up); *see also Ladra v. State*, 177 N.E.3d 412, 421 (Ind. 2021). This Court has overturned precedent to correct judicial error. *Snyder v. King*, 958 N.E.2d 764, 776 (Ind. 2011). This Court should hold that constitutional proportionality review must consider youth at minimum, and Nick’s sentence is disproportionate.²

III. Reviewing Courts Must Uphold Article 1, Section 18.

If even a broad challenge to juvenile *de facto* life sentences is too “particularized” to be reviewable under Section 18, Opp. 18, Section 18 is a nullity. This Court should reconsider its contrary opinions. *Supra* p. 5.

This Court must enforce “constitutional limits” on legislative action. *Madison & I.R. Co. v. Whiteneck*, 8 Ind. 217, 229 (1856). This is a quintessential application of separation of powers. *Id.* (“[G]uarantees are nothing, so long as they are not maintained by forces independent of them[.]”); *Ellingham v. Dye*, 99 N.E. 1, 22 (Ind. 1912) (“[T]he judiciary . . . is charged with the special duty of determining the limitations which the law places upon all official action.”).

² This Court should reject the State’s encouragement to disregard *amici*, Opp. 14-15, who address this issue at length.

Accordingly, this Court reviews the legislature’s compliance even with provisions *explicitly* directed to that body. *E.g.*, *Boehm v. Town of St. John*, 675 N.E.2d 318, 322-24 (Ind. 1996). Judicial enforcement of Section 18’s mandate—embedded in the Bill of Rights—should be no exception.

Indiana’s penal code violates Section 18 insofar as it enables functional juvenile life sentences that “forswear[] *altogether* the rehabilitative ideal.” *Taylor v. State*, 86 N.E.3d 157, 166 (Ind. 2017). Because criminal defendants suffer injury from Section 18 violations, they must have standing to challenge them.

IV. Nick’s 100-year sentence is inappropriate.

Appropriateness review addresses “the aggregate sentence.” *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014). The State contends that consecutive sentences are “necessary,” Opp. 20, yet in every juvenile case it cites for this proposition, the Court reduced the aggregate sentence for similarly serious crimes. And in *Brown*, *Wilson*, and *Fuller v. State*, 9 N.E.3d 653 (Ind. 2014), this Court revised the defendants’ sentences for multiple murder convictions to run concurrently, providing “reasonable hope for a life outside prison.” *Wilson*, 157 N.E.3d at 1184.³

Nick should have “a similar opportunity and incentive to rehabilitate”—a chance “to envision a life outside prison walls.” *Id.* The State’s bald assertion that Nick’s convictions are not “obviously” ascribable to his youth, Opp. 20, changes

³ All of these cases pre-date legislation that increased the proportion of a sentence that someone must serve. Ind. Code § 35-50-6-3.1.

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nothing. This Court has long recognized that juveniles are less culpable than adults. *Brown* at 6-8.

CONCLUSION

Nick asks that this Court grant his transfer petition and order the requested relief.

Respectfully submitted,

/s/ Mark K. Leeman
Mark K. Leeman (29109-09)
Leeman Law Offices
412 East Broadway
Logansport, Indiana 46947
(574) 722-3881
markleeman@leemanlaw.com

Jennifer Joas (20186-49)
Attorney at Law
413 East Main Street
Madison, Indiana 47250
(812) 265-1616
jjoas@madison-attorney.com

Andrea Lewis Hartung (8759-95-TA)
Roderick & Solange MacArthur Justice Center
160 East Grand Avenue, 6th Floor
Chicago, IL 60611
(312) 503-0913
alewishartung@macarthurjustice.org

Benjamin Gunning (8760-95-TA)
Roderick & Solange MacArthur Justice Center
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3434
ben.gunning@macarthurjustice.org

Attorneys for Appellant
Nickalas James Kedrowitz

CERTIFICATE OF WORD COUNT

I verify that this Appellant's Reply Brief in Support of Transfer, excluding cover information, table of contents, table of authorities, signature block, certificate of service, and word count certificate, contains no more than 1,000 words.

/s/ Mark K. Leeman
Mark K. Leeman (29109-09)

CERTIFICATE OF SERVICE

I certify that on April 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:

Ellen H. Meilaender Supervising Deputy Attorney General ellen.meilaender@atg.in.gov	Theodore Rokita Attorney General efile@atg.in.gov
Glenn R. Johnson Indiana Prosecuting Attorneys Council gjohnson@ipac.in.gov	Joel C. Wieneke Indiana Public Defender Council joel.wieneke@gmail.com
Christopher W. Naylor Indiana Prosecuting Attorneys Council cnaylor1@ipac.in.gov cwnaylor@hotmail.com	Bernice Corley Indiana Public Defender Council bcorley@pdc.in.gov
Tracy A Fitz Indiana Prosecuting Attorneys Council tfitz@ipac.in.gov	Mark Jones mjones@etczone.com
Lynnette Fledderman lynnfledderman@etczone.com	Richard Hertel rhertel@riplycounty.com
Marsha L. Levick Juvenile Law Center mlevick@jlc.org	Victoria Casanova Juvenile Law Center victoria@casanovalegalservices.com

/s/ Mark K. Leeman
 Mark K. Leeman (29109-09)