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STATE OF RHODE ISLAND
SUPREME COURT

JOAO NEVES	:	
	:	
v.	:	**SU-2022-0092-MP**
	:	**(PM-2022-00259)**
STATE OF RHODE ISLAND	:	
KEITH NUNES	:	
	:	
v.	:	**SU-2022-0093-MP**
	:	**(PM-2022-00901)**
STATE OF RHODE ISLAND	:	
PABLO ORTEGA	:	
	:	
v.	:	**SU-2022-0094-MP**
	:	**(PM-2022-00260)**
STATE OF RHODE ISLAND	:	
MARIO MONTEIRO	:	
	:	
v.	:	**SU-2023-0167-MP**
	:	**(PM-2023-00921)**
STATE OF RHODE ISLAND	:	

CONSOLIDATED APPEALS FROM SUPERIOR COURT JUDGMENTS GRANTING APPLICATIONS FOR POST-CONVICTION RELIEF

BRIEF OF PETITIONER-APPELLANT STATE OF RHODE ISLAND

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KEY TO THE TRANSCRIPT

The State cites to a single transcript in this brief, which the State will refer to as follows:

Neves Tr.: Heard Before The Honorable Mr. Justice Stephen P. Nugent
Thursday, March 31, 2022
Motion For Summary Judgment And
Cross-Motion For Summary Judgment

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INTRODUCTION

In 2021, the General Assembly amended section 13-8-13 of the General Laws to add subsection (e), which is often referred to as the Youthful Offender Act, and states as follows:

> Any person sentenced for any offense committed prior to his or her twenty-second birthday, other than a person serving life without parole, shall be eligible for parole review and a parole permit may be issued after the person has served no fewer than twenty (20) years' imprisonment unless the person is entitled to earlier parole eligibility pursuant to any other provisions of law. This subsection shall be given prospective and retroactive effect for all offenses occurring on or after January 1, 1991.

R.I. Gen. Laws § 13-8-13(e). The effective date of the amendment was July 6, 2021.

The issue in these consolidated appeals is one of first impression: Whether § 13-8-13(e) applies to individuals sentenced to life and a consecutive sentence—either a term or terms of years or a life sentence—thereby making them eligible for parole from the Adult Correctional Institutions ("A.C.I.") after serving twenty years. The Superior Court (Nugent, J.) concluded that it did and granted substantively similar post-conviction relief applications that Petitioners-Appellees Joao Neves, Keith Nunes, Pablo Ortega, and Mario Monteiro filed and effectively ordered the Parole Board to immediately release each on parole. The Superior Court erred in doing so.

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BACKGROUND

A. Joao Neves

On January 21, 2000, a grand jury indicted Petitioner-Appellee Joao Neves on one count of first-degree murder in P1-2000-0180A, *see* R.I. Gen. Laws § 11-23-1. *See* Docket: P1-2000-0180A at 1-2. Two weeks later, on February 4, Neves pled guilty to the first-degree murder charge and the Superior Court (Krause, J.) sentenced Neves to life. *See* Docket at 1-2.

On February 4, 2000, the same day that Neves pled guilty to first-degree murder, he waived indictment in two other cases and pled to myriad robbery and assault charges.

In P1-2000-0539A, Neves waived indictment and pled guilty to two counts of first degree robbery and the Superior Court sentenced Neves to concurrent sentences of ten years to serve. *See* Docket: P1-2000-0539A at 1-2.

In P1-2000-0543A, Neves waived indictment and pled guilty to two counts of first-degree robbery and one count of assault with intent to commit robbery. *See* Docket: P1-2000-0543A at 1-2. The Superior Court (Krause, J.) sentenced Neves to ten years to serve for each of the two first-degree robbery counts and the assault with intent to commit robbery. *See* Docket: P1-2000-0543A at 1-2.

One week later, on February 11, Neves pled guilty to three additional counts of first-degree robbery in three other cases and the Superior Court (Krause, J.)

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sentenced him to concurrent sentences of ten years to serve. *See* Docket: P1-2000-0542A at 1-2; Docket: P1-2000-0541A at 1-2; Docket: P1-2000-0540A at 1-2.

Neves committed the murder, the robberies, and the assault in January 1999, when he was sixteen years old. All of the ten-year sentences run concurrent with each other but consecutive to the life sentence, meaning that the court effectively sentenced Neves to life plus ten years.

On August 21, 2019, after Neves had served twenty years, the amount of time an individual serving a single life sentence for a 1999 murder would have to serve before becoming eligible for parole, *see* R.I. Gen. Laws § 13-8-13(a)(3), and almost two years before the General Assembly enacted R.I. Gen. Laws § 13-8-13(e), the Parole Board granted Neves's parole application and ordered that he be paroled from his life sentence to the consecutive ten-year sentences in August 2021. *See* Neves's Parole Board Minutes dated Aug. 21, 2019 (Exhibit 1).

The Parole Board noted that Neves was sixteen years-old at the time he committed the offenses and that it "applied its guideline considerations for juvenile offenders." *Id.* at 1. It also explained why it granted Neves's parole application and why it staggered his release date. *See id.* The Parole Board identified a number of "[i]mmediate conditions of parole:" Neves was to "continue his educational training and actively pursue his Bachelors Degree" and the Parole Board, among other things, referred him to complete substance abuse treatment

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and programs that the Board believed would be helpful to Neves's rehabilitation. *See* Neves's Parole Board Minutes dated Aug. 21, 2019. The Parole Board scheduled a review for August 2021 "to review and assign any special conditions for parole for his Life sentence." Neves's Parole Board Minutes dated Aug. 21, 2019.

> The Board considered information reflecting both static and dynamic indicators including, but not limited to, criminal history, police reports(s) (sic), institutional record, risk assessment(s) and parole plan/request. Mr. Neves is represented at hearing by legal counsel. He was sixteen years old at the time of this offense and the Board has applied its guideline considerations for juvenile offenders. He is serving LIFE and a consecutive sentence of ten years. We are considering him on the LIFE sentence. He presents well at the hearing, reflecting a level of maturity appropriate to the twenty years that he has now served and his current age. In the face of the grave loss of life in this case, we believe that he has established that he is not beyond rehabilitation or redemption. Notwithstanding his length of sentence he has been meaningfully active in programs and discipline free for the past four years. The Board appreciates the severity of this offense and the loss of an innocent life, the seriousness of which can never be diminished. Balancing these facts and factors the Board unanimously votes to parole him August 2021 to his next consecutive sentence. Immediate conditions of parole are that Mr. Neves continue in his educational training and actively pursue his Bachelors Degree; we also refer him to complete substance abuse treatment and criminal (sic) thinking programs as well as Emotional Intelligence, which we believe will be helpful to his rehabilitation. The reason for the staggered date is the amount of time the Board believes Mr. Neves should serve on the LIFE sentence. We will consider him when he is next eligible on this ten year consecutive sentence and we will also schedule a review date in August 2021 to review and assign any special conditions of parole for his life sentence.

Neves's Parole Board Minutes dated Aug. 21, 2019.

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On August 23, 2021, a little more than a month after R.I. Gen. Laws § 13-8-13(e) became effective, the Parole Board held the review and, after commending Neves "for staying positive and on track," identified special conditions for Neves's parole from the A.C.I. Neves's Parole Board Minutes dated Aug. 23, 2021.

> Special Conditions of parole will be as follows: 9 Yards six (6) months transition program, with GPS; substance use treatment assessment and compliance with treatment as clinically indicated; mental health counseling for a minimum of one year post release. In addition, we refer Mr. Neves to access one-to-one counseling with the social worker in his facility to address any concerns he has for his re-entry transition.

Neves's Parole Board Minutes dated Aug. 23, 2021. The Parole Board issued a Parole Permit in August 2021. *See* Neves's Parole Permit dated Aug. 27, 2021 (Exhibit 2). The Department of Corrections subsequently determined that Neves would be eligible for parole from his ten-year sentence in December 2024.

B. Keith Nunes

On September 1, 1999, a grand jury indicted Petitioner-Appellee Keith Nunes on ten counts, including first-degree murder and four counts of assault with intent to murder. *See* Docket: P1-1999-2961AG at 1-2, 4. The following April, a jury found Nunes guilty of first-degree murder, assault with intent to commit murder, three counts of felony assault, carrying a pistol without a license, and a drive-by shooting. *See* Docket: P1-1999-2961AG at 1-3, 6. The Superior Court (Krause, J.) imposed sentences that, in the aggregate, amounted to life plus ten

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years to serve plus two consecutive suspended ten year sentences. *See* Docket P1-1999-2961AG at 3-4, 6. This Court affirmed Nunes's convictions on direct appeal and, in so doing, summarized the facts giving rise to the convictions. *See State v. Nunes*, 788 A.2d 460, 462-63 (R.I. 2002).

On June 17, 2019, after Nunes had served twenty years of his life sentence, the amount of time an individual serving a single life sentence for a 1999 murder would have to serve before becoming eligible for parole, *see* R.I. Gen. Laws § 13-8-13(a)(3), and almost two years before the General Assembly enacted R.I. Gen. Laws § 13-8-13(e), the Parole Board granted Nunes's parole application and ordered that he be paroled from his life sentence to his consecutive ten-year sentences. *See* Nunes's Parole Board Minutes dated June 17, 2019 (Exhibit 3). The Parole Board noted that Nunes was eighteen-years-old at the time he committed the murder and explained why it granted his parole application:

> The Board considered information reflecting both static and dynamic indicators including, but not limited to, criminal history, police reports(s) (sic), institutional record, risk assessment(s) and parole plan/request. Mr. Nunes is represented at hearing by his attorney who has submitted a package of materials on his behalf. The Board is considering him for parole from his Life Sentence to his next Consecutive Sentence of ten years. At hearing Mr. Nunes takes full responsibility for his crime and expresses appropriate remorse for his actions and thinking in 1999 when he was eighteen years old and killed his victim. We find that he has taken intentional steps towards his rehabilitation and has succeeded in this. Considering all the circumstances of his crime, severity including loss of life, Mr. Nunes' age, background at the time of the offense, time served to date, positive institutional record, we find that he meets parole release

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> criteria and the Board votes to parole him from this Life Sentence to his next Consecutive Sentence of ten years. We will see him when he is next eligible on that sentence. Between now and then we refer him to the pre-release program and other programs to aid him in his eventual transition to the community. Conditions of parole on this Life Sentence will include mental health and substance abuse treatment assessments and counseling as needed for the duration of parole. The Board will set more specific conditions when we see him when he is next eligible. Parole is contingent upon this offender remaining booking free and in any program or educational course in which he is currently enrolled.

Nunes's Parole Board Minutes dated June 17, 2019. On information and belief, Nunes began serving his consecutive sentences that day and the Parole Board scheduled a review for November 2022 to determine conditions of his parole from the A.C.I. *See* Nunes's Parole Board Minutes dated June 18, 2019. The Parole Board issued a Parole Permit for Nunes in September 2019. *See* Nunes's Parole Permit dated Sept. 5, 2019 (Exhibit 4).

The Department of Corrections ("D.O.C.") determined that Nunes would be eligible for parole from the consecutive ten-year sentences and to the community in November 2022. The Parole Board did not hold the review to determine conditions for Nunes's parole to the community from his consecutive ten-year sentence that it scheduled for November 2022, however, because, in April 2022, the Superior Court granted Nunes's PCR application and ordered the Parole Board to immediately release him on parole. *See infra* at 14-17.

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C. Pablo Ortega

On March 1, 2002, a grand jury indicted Petitioner-Appellee Pablo Ortega for murder, conspiracy, and discharging a firearm during the commission of a crime of violence. *See* Docket: P1-2002-0678AG at 1-2. A little less than three weeks later, on March 20, Ortega pled guilty to first-degree murder and conspiracy charges and the Superior Court (Gale, J.) sentenced him to life for the murder and to a consecutive five-year sentence for conspiracy. *See* Docket: P1-2002-0678AG at 1-2. Ortega was nineteen years-old when he committed the offenses of conviction.

On November 8, 2021, after Ortega had served twenty years of his life sentence, the amount of time an individual serving a single life sentence for a 2001 murder would have to serve before becoming eligible for parole, *see* R.I. Gen. Laws § 13-8-13(a)(3), and a little more than four months after the General Assembly enacted R.I. Gen. Laws § 13-8-13(e), the Parole Board granted Ortega's parole application. *See* Ortega's Parole Board Minutes dated Nov. 8, 2021 (Exhibit 5). The Parole Board noted that Ortega was nineteen years-old when he committed the offenses of conviction and explained why it granted his parole application:

> This is an Initial Parole Hearing for Pablo Ortega who is serving a LIFE plus five years consecutive for Murder I and Conspiracy related to the robbery and killing of 36 y.o. convenience store owner, Mr. Franklin Mercado. Mr. Ortega was nineteen (19) at the time of the

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> crime. Information and materials provided to the Board from the Rhode Island Department of Corrections or from outside sources include, but are not limited to, criminal history, police report(s), risk assessment, attorney packet, inmate letters and parole plan. For today['s] hearing, Mr. Ortega was present by video conference from Medium Security and allowed to make a statement on his own behalf. His attorney, Ms. Holley, was also present by video-conference. Mr. Ortega admits and takes full responsibility for his crime, use of a firearm, taking an innocent life and also offers further insight into his actions and thought process at the time of the crimes. Per his attorney, he has the support of correctional staff and described as 'a model inmate', participating in the mentoring program and serving as a positive role model to mentees under twenty-five years old, volunteering in the NEADS and SCORE programs, as well. He has amassed numerous certificates of completion of programming over the past twenty years including core programs such as victim impact, anger management, criminal thinking, violence reduction and has earned his Bachelor's Degree from College Unbound and has a job waiting for him with College Unbound upon release. He has had no discipline since 2012. We do note an immigration detainer on his record. His attorney advises that his country of origin is Ecuador and he intends to challenge deportation. Mr. Ortega presents exceptionally well to this Board, and his answers to questions at hearing reflect a depth of maturity and insight that we find reflects his genuine remorse and rehabilitation and at a level not typically observed by members of this Board. We find that Mr. Ortega has achieved a level of rehabilitation and served sufficient time to meet statutory parole release from his Life sentence.

Ortega's Parole Board Minutes dated Nov. 8, 2021.

The Parole Board recognized, however, that a debate existed as to whether Ortega should be paroled to his consecutive sentence or to the community and the Parole Board and Ortega agreed that the Parole Board lacked the statutory authority to decide this issue. *See* Ortega's Parole Board Minutes dated Nov. 8, 2021. The Parole Board therefore unanimously voted to parole Ortega to the

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community or to his consecutive sentence and left that determination up to the D.O.C.:

> We acknowledge that [Ortega] has a consecutive sentence of five years and that there is an existing legal debate in court on the application of this term whether it is aggregated and parole is to the community or whether he must serve his consecutive sentence imposed by the court. His attorney and the Board agree that this debate is outside the statutory authority of the Parole Board and we must leave this to the Department of Corrections and/or the Court to decide. For our part, the Board votes unanimously [to] parole Mr. Ortega from his Life sentence to the community or to his next sentence, the same to be determined by the Department of Corrections. When he is released to the community, special conditions of parole shall include: transitional residential program at 9 Yards with GPS for six months, with mental health counseling assessment and counseling as clinically indicated. When appropriate, we encourage Mr. Ortega to participate in community mentoring or speaking opportunities to discuss his crime and rehabilitation. We remind Mr. Ortega that parole is contingent upon him remaining booking free. During any period of post release unemployment, he must work with his parole officer to perform up to twenty hours weekly community service.

Ortega's Parole Board Minutes dated Nov. 8, 2021.

The Parole Board issued a Parole Permit for Ortega in December 2021. *See* Ortega's Parole Permit dated Dec. 8, 2021 (Exhibit 6). The D.O.C. subsequently determined that Ortega should be paroled from his life sentence to his consecutive five year sentence and that he would be eligible for parole to the community in August 2023.

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D. Mario Monteiro

On January 1, 2002, a grand jury indicted Petitioner-Appellee Mario Monteiro on first-degree murder, conspiracy to commit murder, using a firearm while committing a crime of violence resulting in death, and numerous assault with a dangerous weapon and weapons charges. *See* Docket: P1-2002-0061AG at 1-4, 7. In May 2002, a jury found Monteiro guilty of first-degree murder, conspiracy, using a firearm while committing a crime of violence, and multiple assault and weapons charges, and the Superior Court (Krause, J.) sentenced Monteiro two months later to life for the murder, a mandatory consecutive life sentence for discharging a firearm during the commission of a crime of violence in accordance with R.I. Gen. Laws § 11-47-3.2, and other concurrent sentences. *See* Docket: P1-2002-0061AG at 4-7, 9. This Court affirmed Monteiro's convictions and summarized the facts giving rise thereto; they arose out of a daylong fight between rival street gangs in July 2001 and "culminated in the senseless and unlawful killing of an innocent bystander." *State v. Monteiro*, 924 A.2d 784, 787-89 (R.I. 2007).

On December 15, 2021, a little more than five months after the General Assembly enacted R.I. Gen. Laws § 13-8-13(e), and after serving twenty years of his first life sentence, Monteiro appeared before the Parole Board. *See* Monteiro's Parole Board Minutes dated Dec. 15, 2021 (Exhibit 7). The D.O.C. had

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determined that, under the recently-enacted R.I. Gen. Laws § 13-8-13(e), Monteiro was eligible for parole from his first life sentence since he was seventeen years-old when he committed the murder and other crimes. *See* Letter dated Aug. 20, 2021 (Exhibit 8). The D.O.C. advised that, if Monteiro was serving consecutive sentences, "a grant of parole will result in your beginning to serve the term(s) of any consecutive sentence." *Id.*

The Board granted Monteiro's parole application but noted "an existing legal debate" as to whether Monteiro should be paroled to his consecutive life sentence or to the community. Monteiro's Parole Board Minutes dated Dec. 15, 2021. The Board stated that the effective parole date would be December 15, 2021, if Monteiro were paroled to the consecutive life sentence and "no sooner than December 2022" if he were paroled to the community. *Id.* at 2-3.

> Mr. Monteiro is present for this hearing by video conference from Medium Security. His attorney, Ms. Holley, was also present by video conference and the Board provided each an opportunity to present on behalf of Mr. Monteiro. Information and materials provided to the Board from the Rhode Island Department of Corrections or from outside sources include, but are not limited to, criminal history, police report(s), risk assessment(s), mental health assessment which includes a review of special considerations for juvenile offenders, attorney packet with parole plan/request, objection from the Attorney General, letters of support. In this matter, Mr. Monteiro is serving two mandatory consecutive LIFE sentences for Murder and the Use of a Firearm During a [Crime of Violence]. He has been serving since November 29, 2001. He became eligible to see the Parole Board this year due to new legislation in Article 13 impacting youthful offenders. He was seventeen and gang-involved at the time of the murder, which involved a gang rivalry and multiple

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confrontations over the course of two days during which Mr. Monteiro was in possession of and used a firearm. According to the factual summary of the case, when he fired his weapon at a crowd, presumably containing one of his gang enemies, one of the shots instead killed an innocent bystander. Overall, Mr. Monteiro has a positive institutional record. He completed his GED and has a significant number of college credits. Notwithstanding his lengthy sentence, he completed programming in a number of areas including Victim Impact, Grief & Loss, Anger Management. He is enrolled in the Mentoring Program and successfully completed the Secure Risk Group 'stepdown' program to address his gang involvement. As a result of his positive adjustment and programming, the Department of Corrections has removed his SRG status. At hearing he is future oriented and presents well, expressing appropriate responsibility and remorse for his crime, upbringing, gang involvement and perspective on mentoring others and leading a more positive life. He has letters of support submitted on his behalf and seeks parole to a transitional residential program or to a family plan out of state. Concerning his parole risk assessment, he scores as moderate risk below guidelines unless the Board considers mitigating factors and the absence of aggravating factors. After full consideration, the Board finds as mitigating factors that Mr. Monteiro has successfully completed a number of benchmark programs, has worked to remove his SRG status and disavowed gang affiliation, and has a stable plan for transition. We understand that he has a mandatory consecutive life sentence and that there is an existing legal debate in court on the application of his consecutive term—whether it is aggregated and consumed by the first life sentence eligibility or whether he has yet to and must serve his next term. Board members agree this debate is outside the statutory authority of the Parole Board and we must leave this to the Department of Corrections to apply and/or the Court to decide. For our part, the Board votes unanimously to parole Mr. Monteiro from his first life sentence. If it is determined that he must serve another consecutive life term, then the effective parole release date shall be the date of this decision (December 15, 2021). If it is determined that he is eligible for immediate release to the community, then the effective parole release date shall be no sooner than December 2022. The reason for the staggered release (if to the community) is the Board believes there should be some time for Mr. Monteiro to transition to a lower security and preparation for eventual

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> release. Upon his eventual release to the community, special conditions of parole shall include: successful completion of the 9 Yards transitional program with GPS for a minimum of six months. This is with substance use screening and compliance with clinical recommendations for treatment, mental health counseling for six months and, thereafter, as needed. At a later time during his parole release, we encourage Mr. Monteiro to work with his parole officer and participate in community mentoring or speaking opportunities to discuss his crime and rehabilitation. Parole is contingent on Mr. Monteiro remaining booking free and remaining in any program or educational course in which he is currently enrolled. During any period of post release unemployment, he must work with is parole officer to perform up to twenty hours weekly community service.

Monteiro's Parole Board Minutes dated Dec. 1, 2021.

On information and belief, the Parole Board issued a Parole Permit for Monteiro on August 31, 2021. The D.O.C. determined that Monteiro should be paroled to his consecutive life sentence and Monteiro began serving that sentence in December 2021.

E. Post-Conviction Relief Applications—Neves, Nunes & Ortega

In 2022, Neves, Nunes, and Ortega filed post-conviction relief ("PCR") applications in PM-2022-00259, PM-2022-00901, and PM-2022-00260, respectively. *See* Docket: PM-2022-00259 at 1; Docket: PM-2022-00901 at 1; Docket: PM-2022-00260 at 1. Each claimed that, since he was under the age of twenty-two when he committed his offenses of conviction, he was eligible for parole from the A.C.I. (*i.e.*, to the community) after serving twenty years pursuant

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to R.I. Gen. Laws § 13-8-13(e), which took effect in July 2021, and should not have been paroled from his life sentence to his consecutive sentence(s).

On March 31, 2022, the Superior Court granted Neves's, Nunes's, and Ortega's motions for summary disposition and the PCR applications that each filed. *See* Neves Tr. at 18-52. One week later, the court entered an Order requiring:

- the Parole Board to immediately release Neves and Ortega on parole pursuant to the terms and conditions that the Parole Board identified when it voted to parole each from his life sentence to his consecutive term of years; and
- that Nunes be "immediately brought before the Parole Board to determine the terms and conditions for his release . . . and to be thereafter released from incarceration . . . on parole in accordance with such terms and conditions."

See Neves/Nunes/Ortega Order dated April 6, 2022, at 3 (Exhibit 9); Judgments dated March 31, 2022 (Exhibits 10-12). The Superior Court denied the State's motions to stay execution of the decision, order and judgments pending appellate review on April 7, 2022. *See* Order dated April, 2022.

The State filed certiorari petitions asking this Court to review the Superior Court decision, order, and judgments on April 4, 2022. *See* Docket: SU-2022-

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0092-MP at 1; Docket: SU-2022-0093-MP at 1; Docket: SU-2022-0094-MP at 1. Three days later, the State filed emergency motions asking this Court to stay the Superior Court's decision, order, and judgments. *See* Docket: SU-2022-0092-MP at 1; Docket: SU-2022-0093-MP at 1; Docket: SU-2022-0094-MP at 1. A single justice of this Court, sitting as Duty Justice, granted the State's emergency motions pending review by the full Court. *See*, *e.g.*, *Neves v. State*, No. 2022-92-M.P., Order dated April 12, 2022. On April 22, 2022, this Court entered orders denying the State's emergency motions for stay "subject to this matter being remanded to the Superior Court . . . for the sole purpose of . . . setting bail on the consecutive sentence[s] to which" the Parole Board paroled Neves, Nunes, and Ortega. *See*, *e.g.*, *Neves v. State*, No. 2022-0092-MP, Order dated April 22, 2022. The Superior Court set bail for Neves and Nunes on April 29; since an immigration detainer had previously been filed with the D.O.C. for Ortega, the D.O.C. transferred his custody to federal immigration officials and, on information and belief, he has been removed from the country.

On information and belief, consistent with the Superior Court's April 6, 2022, Order:

- Neves was paroled from the A.C.I. on May 11, 2022, or a little more than two-and-one-half years before the date on which the

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D.O.C. determined that he would be eligible for parole to the community from his consecutive ten-year sentences.

- Nunes was paroled from the A.C.I. on June 2, 2002, or a little less than six months before the date on which the D.O.C. determined that he would be eligible for parole to the community from his consecutive ten-year sentences.
- Ortega was paroled from the A.C.I. on April 27, 2022, or a little more than fifteen months before the date on which the D.O.C. determined that he would be eligible for parole to the community from his consecutive five-year sentence.

This Court granted the State's petitions for writs of certiorari in the Neves, Nunes, and Ortega cases and consolidated the three cases on November 29, 2022. *See*, *e.g.*, *Neves v. State*, SU-2022-0092-MP, Order dated Nov. 29, 2022.

G. Post-Conviction Relief Application—Monteiro

On February 24, 2023, Monteiro filed a PCR application in PM-2023-00921. *See* Docket: PM-2023-00921 at 1. Monteiro raised the same basic claim that Neves, Nunes, and Ortega raised and asserted that, because he was seventeen when he committed the first-degree murder, conspiracy, using a firearm while committing a crime of violence, and multiple assault and weapons charges in P1-2002-0061AG, he was immediately eligible for parole from the A.C.I. (*i.e.*, to the

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community) under R.I. Gen. Laws § 13-8-13(e) since he had served more than twenty years at the A.C.I. *See* Monteiro's PCR Application dated Feb. 24, 2023, at 8-18.

The Superior Court (Nugent, J.) issued a written decision granting Monteiro's PCR application and ordered that Monteiro "be immediately brought before the Parole Board to confirm the terms and conditions for his release from incarceration to be at liberty on parole set in December 2021 with review after December 2022 and to be thereafter released from incarceration to be at liberty on parole in accordance with such terms and conditions." Decision dated May 17, 2023 ("Monteiro Decision") (Exhibit 13); Order dated May 19, 2023, at 2 (Exhibit 14); Judgment dated May 22, 2023 (Exhibit 15).

On May 26, 2023, three days after the Superior Court denied the State's motion to stay execution of the order and judgment, the State filed an emergency motion for stay in this Court. *See* Docket: SU-2023-0167-MP at 2; Docket: PM-2023-00921 at 2. On June 2, a single justice of this Court, sitting as Duty Justice, granted the State's emergency motion pending review by the full Court. *See Monteiro v. State*, No. 2023-167-M.P., Order dated June 2, 2023. One week later, this Court granted the State's emergency motion for a stay, *see Monteiro v. State*, No. 2023-167-M.P., Order dated June 9, 2023, and, on September 12, granted the State's certiorari petition and consolidated Monteiro's case with Nunes's, Neves's,

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and Ortega's cases, *see Monteiro v. State*, No. 2023-167-M.P., Order dated Sept. 12, 2023.

On information and belief, absent the stay, Monteiro would likely have been paroled from the A.C.I. years before the date on which the D.O.C. determined that he would be eligible for parole to the community from his consecutive life sentence.

PAROLE STATUTES

There are multiple statutes that discuss parole eligibility.

A. R.I. Gen. Laws § 13-8-9

Section 13-8-9 of the General Laws applies to inmates serving a single sentence of a term of years for a conviction other than first- or second-degree murder and states that those inmates are eligible for parole after serving one-third of the sentence. *See* R.I. Gen. Laws § 13-8-9(a). Subsection (b) provides that an individual serving a term of years for first- or second-degree murder committed after July 1, 2015, "shall not be eligible for a parole permit until he or she has served at least fifty-percent (50%) of his or her sentence." R.I. Gen. Laws § 13-8-9(b).

B. R.I. Gen. Laws § 13-8-10

Section 13-8-10 of the General Laws applies to inmates serving more than one sentence. If an inmate is serving concurrent sentences, the inmate is eligible

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for parole after serving one-third of the longest sentence; if an inmate is serving consecutive sentences, the inmate is eligible for parole after serving one-third of the total amount of time he or she collectively has to serve. *See* R.I. Gen. Laws § 13-8-10(a). In other words, if an inmate is serving concurrent sentences of twenty years and ten years, the inmate would be eligible for parole once he or she has served one-third of the twenty-year sentence; if an inmate is serving consecutive sentences of twenty years and ten years, the inmate would be eligible for parole once he or she has served one-third of the aggregate of those sentences (thirty years) or ten years. *See id.*

C. R.I. Gen. Laws § 13-8-13

Section 13-8-13 of the General Laws applies to inmates who are serving one or more lengthy sentences, a single life sentence, or consecutive life sentences.

- Section 13-8-13(a)(1) states that inmates serving sentences of such length that they would not be eligible for parole in less than ten years pursuant to R.I. Gen. Laws § 13-8-9 (*e.g.*, a sentence of sixty years to serve, for which they would not be eligible for parole under § 13-8-9 until they served one-third of that sentence) or R.I. Gen. Laws § 13-8-10 (*e.g.*, consecutive sentences totaling sixty years to serve, for which they would not be eligible for parole under § 13-9-10 until they

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served one-third of the sixty years) shall be eligible for parole after they serve ten years. *See* R.I. Gen. Laws § 13-8-13(a)(1).

- Sections 13-8-13(a)(2)-(4) state that inmates serving life sentences for first- or second-degree murder are eligible for parole after serving a minimum number of years of the life sentence that varies depending on the date of the murder. *See id.* An inmate convicted of a first- or second-degree murder committed between June 30, 1995, and July 1, 2015, must serve at least twenty years before becoming eligible for parole. *See* R.I. Gen. Laws § 13-8-13(a)(3) & R.I. Gen. Laws § 13-8-13(a)(4).

- Section 13-8-13(d) addresses parole eligibility for inmates serving consecutive life sentences. *See* R.I. Gen. Laws § 13-8-13(d). It provides that an inmate must serve a specific amount of time "consecutively on each life sentence" before he or she is eligible for parole, the lengths of which depend on the offenses of conviction and dates thereof. *See* R.I. Gen. Laws § 13-8-13(d). Individuals serving consecutive life sentences for offenses committed between June 30, 1995, and July 1, 2015, must serve "not less than fifteen (15) years consecutively on each life sentence." *Id.* Prior to 2015, this provision was codified as R.I. Gen. Laws § 13-8-13(b).

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None of the parole statutes specifically addresses when inmates serving a life sentence and a consecutive term of years are eligible for parole.

ARGUMENT

The Superior Court erroneously held that R.I. Gen. Laws § 13-8-13(e) applied to individuals serving consecutive sentences and erred in granting Neves's, Nunes's, Ortega's, and Monteiro's PCR applications and ordering their immediate release on parole. The plain and unambiguous language of § 13-8-13(e) states that it applies to an individual sentenced for "any offense," meaning an individual serving a single sentence at the A.C.I. This interpretation is consistent with the parole scheme as a whole.

The Superior Court's interpretation of § 13-8-13(e) as applying to individuals like Neves, Nunes, Ortega, and Monteiro who are serving consecutive sentences cannot withstand scrutiny for other reasons as well. The Superior Court's interpretation of § 13-8-13(e) cannot be reconciled with other parole statutes—none of which specify when an inmates serving life and a consecutive terms of years are eligible for parole. Nor can it be reconciled with R.I. Gen. Laws § 11-47-3.2; the Superior Court's interpretation of § 13-8-13(e) conflicts with, and would effectively negate, the mandatory consecutive sentence provisions of § 11-47-3.2. It would also raise serious separation of powers concerns insofar as it

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would seemingly nullify certain judgments of criminal conviction that previously entered.

A. THE PLAIN LANGUAGE OF R.I. GEN. LAWS § 13-8-13(E) STATES THAT IT APPLIES TO INDIVIDUALS CONVICTED OF A SINGLE OFFENSE.

This Court reviews questions of statutory interpretation *de novo*. *See State v. Graff*, 17 A.3d 1005, 1010 (R.I. 2011). The first step when doing so is to determine whether a statute "has a plain meaning and is, as such, unambiguous." *State v. Diamante*, 83 A.3d 546, 550 (R.I. 2014). If the language of a statute is clear and unambiguous, this Court simply gives the words of the statute their plain and ordinary meanings and its "interpretative task is done." *Id.*; *see also State v. Gibson*, 182 A.3d 540, 547 (R.I. 2018). This is so "because '[the] ultimate goal is to give effect to the General Assembly's intent,' and . . . the plain language of a statute is the 'best indicator of [legislative] intent.'" *Diamante*, 83 A.3d at 550 (quoting *Olamuyiwa v. Zebra Atlantek, Inc.*, 45 A.3d 527, 534 (R.I. 2012)); *see also State v. Burke*, 811 A.2d 1158, 1167 (R.I. 2002).

The plain language of § 13-8-13(e) is clear and unambiguous. It states that an individual sentenced for "any *offense* committed prior to his or her twenty-second birthday" is eligible for parole after "no fewer than twenty (20) years' imprisonment . . . ." *Id.* The plain and ordinary meaning of this provision, specifically, the reference to the singular "offense," indicates that the General

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Assembly intended subsection (e) to apply to individuals serving a single sentence and not to individuals such as the Petitioners-Appellees who are serving consecutive sentences.

This Court's decision in *State v. Badessa*, 869 A.2d 61 (R.I. 2005), supports this interpretation. The issue in *Badessa* was whether, for purposes of the criminal expungement statutes, a "first offender" referred to an individual with one and only one conviction or an individual with multiple criminal convictions. *See id.* at 62. This Court held that "first offender" referred to an individual "who has been convicted of only one offense." *Id.* at 66. It noted 'with close attention the use of 'a' as a descriptive term where first offender is defined as 'a person who has been convicted of *a* felony offense or *a* misdemeanor offense . . . .'" *Id.* (quoting R.I. Gen. Laws § 12-1.3-1(3)). The Court then stated, "When used in this context, we ascribe to it the dictionary meaning 'any; a single.'" *Id.* (quoting Random House Unabridged Dictionary 1 (2nd ed. 1993)).

Had the General Assembly intended § 13-8-13(e) to apply to individuals serving more than one sentence, it could have used the phrase "offense or offenses." It did just that when it simultaneously enacted R.I. Gen. Laws § 13-8-14.2(a), a statute that identifies special criteria for the Parole Board to consider when reviewing parole applications submitted by individuals who were under the age of eighteen when they committed "an offense or offenses:"

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> When a person who is serving a sentence imposed as the result of *an offense or offenses* committed when he or she was less than eighteen years of age becomes eligible for parole pursuant to applicable provisions of law, the parole board shall ensure that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines to do so, consistent with existing law.

Id. (emphasis added).

The General Assembly did not use the phrase "offense or offenses" in § 13-8-13(e), but rather used the singular "offense". The General Assembly is "presumed to have intended each word or provision of a statute to express a significant meaning, and [this Court] will give effect to every word, clause, or sentence, whenever possible.'" *State v. Clark*, 974 A.2d 558, 571 (R.I. 2009) (quoting *State v. Bryant*, 670 A.2d 776, 779 (R.I. 1996)).

The fact that § 13-8-13(e) refers to "any" offense does not change the plain meaning of the statute. It simply means that an individual convicted of any criminal offense identified in the General Laws before he or she turned twenty-two is eligible to see the parole board after serving twenty years. This Court has interpreted similar phrases in other statutes in a similar fashion. *See*, *e.g.*, *State v. Lefebvre*, 198 A.3d 521, 526 (R.I. 2019) ("any judicial proceeding relating to child abuse or neglect . . . encompasses the full spectrum of matters that relate to the abuse or neglect of a child"); *State v. Caprio,* 477 A.2d 67, 71 (R.I. 1984) ("any person" in arson statute "defies the exclusion of any class of persons"); *State v. Mann*, 119 R.I. 720, 382 A.2d 1319, 1321-22 (1978) ("any person" in R.I. Gen.

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Laws § 21-28-4.01(c) means that any individual, including the defendant, who was a certified osteopath, was subject to penalties for failing to register as required under the Controlled Substances Act).

The Arkansas Supreme Court interpreted the phrase "any offense" in a state firearm enhancement statute as referring to a single offense. *See McKeever v. State*, 240 S.W.3d 583 (Ark. 2006). The Arkansas statute provided that anyone convicted of "any offense" classified as a felony who used a firearm was subject to a sentence enhancement. *See id.* at 587 (citing Ark. Code Ann. § 16-90-120). The Arkansas Supreme Court held that the defendant, who fired one gun at three people in a car and claimed that he was only subject to a single enhancement, was subject to multiple sentencing enhancements because "each terroristic act was a separate offense, each of which could have been committed with or without a firearm. *See McKeever*, 240 S.W.3d at 588. The court thus interpreted "any offense" as referring to a single offense and held that the defendant was therefore subject to three enhancements for the three offenses.

This Court need not go any further. The plain and unambiguous language of § 13-8-13(e) is the best indicator of the General Assembly's intent. *See Diamonte*, 83 A.3d at 550. The use of the singular "offense" in § 13-8-13(e) indicates that the General Assembly intended for § 13-8-13(e) to apply only to individuals serving single sentences at the A.C.I. This Court should therefore vacate the judgments

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and orders that the Superior Court entered granting Neves's, Nunes's, Ortega's, and Monteiro's PCR applications.

B. INTERPRETING R.I. GEN. LAWS § 13-8-13(E) AS APPLYING TO INDIVIDUALS CONVICTED OF A SINGLE OFFENSE IS CONSISTENT WITH OTHER PAROLE STATUTES.

Although this Court typically interprets statutes based on their plain language, it has recognized that it has "'the responsibility of effectuating the intent of the Legislature by examining a statute in its entirety[.]'" *State v. Jilling*, 275 A.3d 1160, 1164 (R.I. 2022). As such, "'even when confronted with a clear and unambiguous statutory provision, 'it is entirely proper for [this Court] to look to the sense and meaning deducible from the context.''" *Id.* (quoting *State v. Hazard*, 68 A.3d 479, 485 (R.I. 2013); *In re Brown*, 903 A.2d 147, 150 (R.I. 2006)); *see also Hazard*, 68 A.3d at 485 ("[T]he plain meaning approach must not be confused with 'myopic literalism . . . .'") (quoting *In re Brown*, 903 A.2d at 150; *In re Estate of Roche*, 109 A.2d 655, 659 (N.J. 1954)).

The interpretation that § 13-8-13(e) applies to individuals serving a single sentence is consistent with the parole statutes as a whole insofar as it would require individuals serving life and a consecutive sentence to be paroled from one sentence to the next. *See Caprio*, 477 A.2d at 70 ("Where one provision is part of the overall statutory scheme, the legislative intent must be gathered from the entire statute and not from an isolated provision."); *see also Arnold v. Lebel*, 941 A.2d

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813, 819 (R.I. 2007); *State v. DeMagistris*, 714 A.2d 567, 574 (R.I. 1998). No parole statute addresses when inmates serving life sentences and a consecutive term or terms of years are eligible for parole. *See generally* R.I. Gen. Laws §§ 13-8-9, 13-8-10, 13-8-13.

Since the General Assembly has not enacted any legislation specifically addressing when inmates serving life plus a consecutive term or terms of years are eligible for parole, the D.O.C. has determined that inmates must be paroled from a life sentence to a consecutive term of years before they become eligible for parole from the A.C.I. Interpreting § 13-8-13(e) as applying to individuals serving life and a consecutive sentence or consecutive sentences would run counter to how the D.O.C. determines parole eligibility for other individuals serving life and a consecutive sentence.

One final point. This Court has a "strong policy against interfering with" the discretion that a trial justice has in sentencing matters and will "only interfere with that discretion in rare instances when the trial justice has imposed a sentence that is without justification and is grossly disparate from other sentences generally imposed for similar offenses." *State v. Coleman*, 984 A.2d 650, 654 (R.I. 2009) (quoting *State v. Rossi*, 771 A.2d 906, 908 (R.I. 2001) (mem.)) (internal quotation marks and citation omitted). Interpreting § 13-8-13(e) to apply to individuals serving multiple consecutive sentences would mean that an individual serving a

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single life sentence would be eligible for parole at the same time as someone whom the trial court determined should serve life and a consecutive term or terms of years.

C. INTERPRETING R.I. GEN. LAWS § 13-8-13(E) AS APPLYING TO INDIVIDUALS SERVING CONSECUTIVE LIFE SENTENCES WOULD CONFLICT WITH R.I. GEN. LAWS § 13-8-13(D).

Interpreting § 13-8-13(e) as applying to inmates serving a single sentence is also consistent with the provisions of R.I. Gen. Laws § 13-8-13(d). Section 13-8-13(d) states that an individual serving consecutive life sentences must serve a minimum amount of time consecutively *on each life sentence* before he or she is eligible for parole from the A.C.I.:

> In the case of a prisoner sentenced consecutively to more than one life term for crimes occurring after May 7, 1981, the permit may be issued only after the prisoner has served not less than ten (10) years consecutively on each life sentence; provided, in the case of a prisoner sentenced consecutively to more than one life term for crimes occurring after June 30, 1995, the permit may be issued only after the prisoner has served not less than fifteen (15) years consecutively on each life sentence. In the case of a prisoner sentenced consecutively to more than one life term for crimes occurring after July 1, 2015, the permit may be issued only after the prisoner has served not less than twenty (20) years consecutively on each life sentence. In the case of a prisoner sentenced consecutively to more than one life term for crimes, including first- or second-degree murder, occurring after July 1, 2015, the permit may be issued only after the prisoner has served not less than twenty-five years consecutively on each life sentence.

R.I. Gen. Laws § 13-8-13(d).

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Section 13-8-13(e) does not reference § 13-8-13(d) and nothing in § 13-8-13(e) indicates that it supplants § 13-8-13(d) with respect to certain individuals serving consecutive life sentences. Interpreting § 13-8-13(e) as applying to individuals who are serving consecutive life sentences would seemingly conflict with the provisions of § 13-8-13(d). Although § 13-8-13(d) requires individuals to serve a specific amount of time on each life sentence before becoming eligible for parole, under the Superior Court's interpretation of § 13-8-13(e), individuals such as Monteiro would be eligible for parole before beginning to serve any portion of the consecutive life sentence. As noted above, this would undermine the decisions that the trial justice made when imposing sentence.

D. INTERPRETING R.I. GEN. LAWS § 13-8-13(E) AS APPLYING TO INDIVIDUALS SERVING LIFE PLUS A CONSECUTIVE TERM OR TERMS OF YEARS WOULD BE INCONSISTENT WITH THE PROVISIONS OF R.I. GEN. LAWS § 11-47-3.2.

Interpreting § 13-8-13(e) as applying to individuals serving life and a consecutive term of years also cannot be reconciled with the provisions of R.I. Gen. Laws § 11-47-3.2. *See DaPonte v. Ocean State Job Lot, Inc.*, 21 A.3d 248, 251 (R.I. 2011) ("We are mindful that it is our task, whenever possible, to construe laws 'such that they will harmonize with each other and be consistent with their general objective scope.'") (internal citation omitted). Section 11-47-3.2 prescribes mandatory consecutive terms of imprisonment for individuals convicted of using or discharging a firearm when committing or attempting to commit crimes

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of violence. *See* R.I. Gen. Laws § 11-47-3.2; *see also* R.I. Gen. Laws § 11-47-2(5) (definition of "crime of violence"). The statute further states that, notwithstanding the provisions of Title 13, Chapter 8, any sentence of a term of years imposed pursuant to that section "shall be imposed consecutively . . . *and the person shall not be afforded the benefits of deferment of sentence or parole* . . . ." R.I. Gen. Laws § 11-47-3.2(a) (emphasis added); *see also* R.I. Gen. Laws § 11-47-3.2(c).

If § 13-8-13(e) created parole eligibility after twenty years for inmates serving life plus a mandatory consecutive term of years pursuant to R.I. Gen. Laws § 11-47-3.2, an individual could be paroled from the A.C.I. before he or she begins to serve or completes serving the consecutive and *nonparolable* term of years. Under R.I. Gen. Laws § 13-8-13(a), individuals serving life for any offense committed after July 1, 2015, must serve twenty years before they are eligible for parole, *see* R.I. Gen. Laws § 13-8-13(a)(5)—twenty-five years if he or she is sentenced to life for first- or second-degree murder, *see* R.I. Gen. Laws § 13-8-13(a)(4). If an individual serving life and a mandatory term of years for discharging a firearm pursuant to § 11-47-3.2 were eligible for parole from the A.C.I. after serving twenty years, it would effectively nullify the mandatory consecutive and nonparolable term of years imposed pursuant to § 11-47-3.2.

Interpreting § 13-8-13(e) to apply to individuals such as Monteiro who are serving mandatory consecutive life sentences under R.I. Gen. Laws § 11-47-3.2

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would also mean that an individual could be paroled from the A.C.I. before he or she begins serving the mandatory consecutive life sentence. As noted above, § 13-8-13(d) specifically addresses parole eligibility for individuals serving consecutive life sentences and states that individuals serving consecutive life sentences for offenses committed after July 1, 2015, must serve "not less than twenty (20) years consecutively on each sentence"—twenty-five years if the life sentence is for first- or second-degree murder—before becoming eligible for parole from the A.C.I. *Id.*

In Monteiro's case, if, as the Superior Court concluded, R.I. Gen. Laws § 13-8-13(e) applied to individuals serving consecutive life sentences, he would have been eligible for parole from the A.C.I. after serving twenty years and, but for the stay that this Court entered, would have been paroled from the A.C.I. after serving less than twenty-two years. This means that Monteiro could have served as few as five years of his mandatory consecutive life sentence before becoming eligible for parole, and, in fact, would have served less than two years.

E. INTERPRETING R.I. GEN. LAWS § 13-8-13(E) AS APPLYING TO INDIVIDUALS SERVING LIFE PLUS A CONSECUTIVE TERM OR TERMS OF YEARS OR SERVING CONSECUTIVE LIFE SENTENCES WOULD RAISE SEPARATION OF POWERS CONCERNS.

Finally, interpreting § 13-8-13(e) as applying to individuals serving life and a consecutive sentence would raise separation of powers concerns. Article V of the Rhode Island Constitution states, "The powers of the government shall be

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distributed into three separate and distinct departments: the legislative, executive and judicial." R.I. Const. art. V. It is well settled that the General Assembly cannot rightfully exercise judicial power. *See, e.g., State v. Greenberg*, 951 A.2d 481, 496-97 (R.I. 2008); *Lemoine v. Martineau*, 115 R.I. 233, 342 A.2d 616, 620-22 (1975); *State v. Garnetto*, 75 R.I. 86, 63 A.2d 777, 779 (1949). If § 13-8-13(e) applied to individuals serving life and a consecutive sentence, it would constitute an impermissible exercise of judicial power by the legislature.

A criminal conviction is a final judgment and is to be given effect in accordance with its terms. *See State v. Sivo*, 925 A.2d 901, 919 (R.I. 2007). "The power to reduce a sentence, either directly or indirectly, is reserved to the judiciary." *State v. Parrillo*, 158 A.3d 283, 291 (R.I. 2017); *see also Rose v. State*, 92 A.3d 903, 910-11 (R.I. 2014) ("While the executive branch may execute a sentence, the power to reduce the length of a sentence imposed by a justice of the Superior Court is a judicial one.").

There are few acts that constitute more of an impermissible encroachment on judicial power than an attempt by the legislature to reverse or vacate a state court judgment. There are cases dating back more than 150 years in which this Court has struck down legislation purporting to do so. *See, e.g., Taylor v. Place*, 4 R.I. 324 (1856) (legislation purporting to open state court judgment and provide defendants leave to amend affidavits unconstitutional exercise of judicial power);

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Opinion of Supreme Court upon the Act to Reverse the Judgment against Dorr, 3 R.I. 299 (1854) (legislation purporting to reverse and annul state court judgment for treason violated separation of powers).

If an individual sentenced to life and a consecutive sentence before the enactment of R.I. Gen. Laws § 13-8-13(e) were eligible for parole after serving twenty years under § 13-8-13(e), and before he or she began serving or completed service of the consecutive sentence, it would effectively nullify the judgment of conviction that the Superior Court entered. And, in cases in which a defendant is serving a mandatory consecutive term of years under § 11-47-3.2, the defendant would be eligible for parole even though the statute and judgment of conviction specifically state that he or she is not eligible for parole from the consecutive sentence. This would seemingly constitute an impermissible exercise of judicial power by the legislature. *See*, *e.g.*, *Fields v. Missouri Bd. of Prob. & Parole*, 559 S.W.3d 12, 18-19 (Mo. Ct. App. 2018) ("[W]here the statute defining the offense precludes parole eligibility for a mandatory period of time, 'it is implicit in the terms of the sentence' and, thus, affects the prosecution.") (quoting *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 658 (1974)).

The United States Supreme Court's decisions in *Roper v. Simmons,* 543 U.S. 551 (2005), *Graham v. Florida,* 560 U.S. 48 (2010), and *Miller v. Alabama,* 567 U.S. 460 (2012), which the Petitioners-Appellees and/or the Superior Court cited

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below, are inapposite. The Supreme Court's rationale in those cases was that youthful offenders—individuals who were younger than eighteen years-old when they committed their crimes—should be treated differently than individuals who committed crimes when they were adults. The cases set forth bright line rules regarding the punishment of those youthful offenders and address the constitutionality of sentencing juveniles to death or mandatory life without parole sentences, which is not the case here, and how sentencing courts must take into account the age of the defendant at the time he or she committed the offense(s) of conviction before imposing life sentences.

F. THE SUPERIOR COURT ERRED IN ORDERING THE PAROLE BOARD TO IMMEDIATELY PAROLE NEVES, NUNES, ORTEGA, AND MONTEIRO FROM THE A.C.I.

Finally, the Superior Court erred in ordering the Parole Board to immediately parole Neves, Nunes, Ortega, and Monteiro from the A.C.I. Even if each were *eligible* for parole from the A.C.I. after serving twenty years under R.I. Gen. Laws § 13-8-13(e), the only relief to which Neves, Nunes, Ortega, and Monteiro were entitled was to be seen by the Parole Board. There is no authority to support the Superior Court's conclusion that, under § 13-8-13(e), Neves, Nunes, Ortega, and Monteiro were *entitled* to be immediately paroled from the A.C.I. or its orders requiring the Parole Board to immediately release each on parole. *See*

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Neves/Nunes/Ortega Order dated April 6, 2022, at 3; Monteiro Order dated May 19, 2023, at 2.

The parole statutes instead vest the Parole Board with the discretion to issue parole permits based on its review of the criteria set forth in R.I. Gen. Laws § 13-8-14 and the Parole Board's guidelines and to identify terms and conditions of parole. *See*, *e.g.*, R.I. Gen. Laws § 13-8-9; R.I. Gen. Laws § 13-8-14; R.I. Gen. Laws § 13-8-14.1; R.I. Gen. Laws § 13-8-16. The Superior Court's order requiring the Parole Board to immediately release Neves and Nunes, and, to a lesser extent, Ortega and Monteiro, stripped the Parole Board of its authority and discretion to determine whether any of those individuals should be paroled to the community. The court, which is understandably not as well-equipped to decide whether any inmate should be released on parole, made the decision for the Parole Board and without the benefit of the information that the Parole Board reviews when it decides whether an inmate should be paroled.

In the cases of Neves and Nunes, whose parole applications the Parole Board considered before the effective date of § 13-8-13(e), the Parole Board never decided that either should be paroled to the community.

In Neves's case, the Parole Board voted in 2019 to parole him from his life sentence to his consecutive sentence in 2021 and stated that it would consider him for parole from the consecutive ten-year sentence when he was eligible. *See*

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Neves's Parole Board Minutes dated Aug. 21, 2019. The Board scheduled a review of Neves's parole application for 2021 to review and assign conditions of parole to community. *See id.* At the August 2021, review, which took place a little more than a month after the effective date of R.I. Gen. Laws § 13-8-13(e), the Parole Board seemingly identified conditions for his parole to the community, including, among other things, placement at Nine Yards and counseling. The Parole Board did not vote to parole Neves to the community, however, and, in fact, identified steps that it wanted Neves to take during his continued incarceration, including "programming to address anger management and mindfulness" and referred Neves "to access one-on-one counseling with the social worker in his facility to address any concerns he has for his re-entry transition." Neves's Parole Board Minutes dated Aug. 23, 2021.

In Nunes's case, the Parole Board voted to parole Nunes to his consecutive ten-year sentence in June 2019. *See* Nunes's Parole Board Minutes dated June 17, 2019. The Board identified conditions of parole from his life sentence as including mental health and substance abuse treatment assessments and counseling as needed, but did not set any conditions for his parole to the community. *See id.* The Parole Board instead stated that it would see Nunes when he became eligible for parole to the community and that it would set "more specific conditions" at that

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time; an addendum specifically stated that the Parole Board would review Nunes in November 2022. *See id.*

Before the Parole Board could conduct the November 2022 review, however, the Superior Court entered the April 2022 order requiring that Nunes be "immediately brought before the Parole Board to determine the terms and conditions for his release" on parole to the community and "to be thereafter released from incarceration to be at liberty on parole in accordance with such terms and conditions." *See* Neves/Nunes/Ortega Order dated April 6, 2022, at 3. The Parole Board never independently voted to parole Nunes to the community or decided whether and when that should occur.

Ortega's and Monteiro's cases are slightly different. In Ortega's case, the Parole Board voted to parole Ortega either to the community or to his consecutive five-year sentence. *See* Ortega's Parole Board Minutes dated Nov. 8, 2021. Noting "an existing legal debate" regarding how to calculate parole eligibility for individuals serving life and consecutive terms of years, the Parole Board left it up to the D.O.C. to make the decision of whether Ortega should be paroled to the community or to his consecutive sentence—in other words, to make the decision about when he was eligible for parole to the community. *See id.* The Parole Board identified special conditions for Ortega's parole to the community, but added that "parole is contingent upon him remaining booking free." *Id.*

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In Monteiro's case, the Parole Board voted to parole Monteiro either to the community or to his consecutive sentence. *See* Monteiro's Parole Board Minutes dated Dec. 15, 2021. Noting "an existing legal debate" about whether he needed to serve his consecutive life sentence before becoming eligible for parole to the community, the Parole Board left the decision about whether Monteiro should be paroled to the community or to his consecutive life sentence to the D.O.C. or the court. *See id.* The Parole Board added, however, that if Monteiro were paroled to the community, it should not take place for another year—until December 2022—because it believed that "there should be some time for Mr. Monteiro to transition to a lower security and preparation for eventual release." *Id.* The Parole Board identified special conditions for Ortega's parole to the community, but added that "[p]arole is contingent on Mr. Monteiro remaining booking free and remaining in any program or educational courses in which he is currently enrolled." *Id.*

Unlike Neves's and Nunes's cases, the Parole Board alternatively voted to release Ortega and Monteiro to the community. However, those parole decisions were conditioned on each remaining "booking free" and the Parole Board identified "special conditions" for parole to the community, including placement at Nine Yards and mental health assessments and counseling. *See* Ortega's Parole Board Minutes dated Nov. 8, 2021; Monteiro's Parole Board Minutes dated Dec. 15, 2021. The Superior Court's order requiring the Parole Board to immediately

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release Ortega and Monteiro on parole did not recognize that the Parole Board conditioned parole to the community on remaining "booking free" and, at least in Ortega's case, did not allow the Parole Board any time to make arrangements for the special conditions of parole, including placement at Nine Yards and a mental health assessment, in the ordinary course.

In sum, assuming *arguendo* that § 13-8-13(e) applied to individuals serving life and a consecutive term of years or life sentence, the only relief to which Neves, Nunes, Ortega, and Monteiro were entitled in the Superior Court was to be seen by the Parole Board; none was entitled to his immediate release on parole. The Superior Court improperly exercised the authority of the Parole Board when it ordered that Neves, Nunes, Ortega, and Monteiro be immediately released from the A.C.I. As such, even if this Court determines that the Superior Court correctly determined that R.I. Gen. Laws § 13-8-13(e) applied to Neves, Nunes, Ortega, and Monteiro, it should vacate the judgments that entered in the Superior Court and the Superior Court's order requiring the Parole Board to immediately release each on parole.

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CONCLUSION

For the reasons discussed above, this Court should vacate the Superior Court's decisions, orders, and judgments granting Neves's, Nunes's, Ortega's, and Monteiro's PCR applications.

Respectfully submitted,

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By Its Attorneys,

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CERTIFICATE OF WORD COUNT & COMPLIANCE WITH RULE 18(B)

1. This brief contains 10,156 words, excluding the parts exempted from the word count by Rule 18(b).

2. This brief complies with the font, spacing, and type size requirements stated in Rule 18(b).

/s/ Christopher R. Bush

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CERTIFICATE OF SERVICE

I certify that on January 8, 2024, I filed this brief through the electronic filing system and served copies through that system on Lynette Labinger, Esq.; Lisa Holley, Esq.; and Sonja Deyoe, Esq. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Brianna Messa-Mastronardi

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