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E2023-01684-SC-R11-PD

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

CHRISTA GAIL PIKE,	)	
	)	
Petitioner/Applicant,	)	
	)	**No. E2023-01684-SC-R11-PD**
v.	)	
	)	
STATE OF TENNESSEE,	)	
	)	**CAPITAL CASE**
Respondent.	)	

ON APPLICATION FOR PERMISSION TO APPEAL FROM THE JUDGMENT OF THE COURT OF CRIMINAL APPEALS

APPLICATION FOR PERMISSION TO APPEAL

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the post-conviction court erred in denying Ms. Pike's motion to reopen her post-conviction petition based on this Court's ruling in *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022).

2. Whether Ms. Pike's death sentence, imposed for a crime committed when she was 18 years old, is disproportionate under the Eighth Amendment and Article I, § 16 of the Tennessee Constitution.

JURISDICTIONAL STATEMENT

This Court issued its opinion in *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022) on November 18, 2022. On August 30, 2023, Christa Pike timely filed a motion to reopen her post-conviction proceedings, arguing that the principles set forth in *Booker* apply with equal force to her and that her death sentence is disproportionate. The post-conviction court denied and dismissed the motion on October 30, 2023. The Court of Criminal Appeals affirmed the lower court and denied Ms. Pike's Application for Permission to Appeal on May 17, 2024. No petition for rehearing was filed. This Application has been filed within the time prescribed by Tennessee Supreme Court Rule 28, § 10(B). Ms. Pike now seeks this Court's permission to appeal the ruling of the lower court.

PROCEDURAL HISTORY

Ms. Pike was sentenced to death in 1996 for a murder she and two accomplices committed in 1995 when she was 18 years old. *See State v. Pike*, 978 S.W.2d 904 (Tenn. 1998). Her accomplices—Tadaryl Shipp, then 17 years old, and Shadolla Peterson, then 18 years old—were sentenced to life with the possibility of parole[1] and time served, respectively. Ms. Pike's convictions and death sentence were affirmed on direct appeal. *State v. Pike*, 978 S.W.2d 904 (Tenn. 1998), *cert. denied*, 526 U.S. 1147 (1999).

[1] The Tennessee Department of Correction currently lists Mr. Shipp's release eligibility date as July 1, 2026. https://foil.app.tn.gov/foil/details.jsp (last visited July 10, 2024).

Ms. Pike pursued post-conviction and federal habeas relief. *Pike v. State*, No. E2009–00016–CCA–R3–PD, 2011 WL 1544207 (Tenn. Crim. App. Apr. 25, 2011), *perm. appeal denied* (Nov. 15, 2011);[2] *Pike v. Gross*, 936 F.3d 372 (6th Cir. 2019), *cert. denied*. Ms. Pike timely filed her Motion to Reopen Petition for Post-Conviction on August 30, 2023, requesting relief due to the issuance of this Court's opinion in *Booker*. *See* Notice of Filing, Exhibit 1. The State filed a Response in Opposition to Motion to Reopen Petition for Post-Conviction Relief on September 29, 2023. *See* Notice of Filing, Exhibit 5. Ms. Pike filed a reply on October 19, 2023. *See* Notice of Filing, Exhibit 8. On October 30, 2023, the Knox County Criminal Court denied and dismissed the Motion to Reopen. *See* Notice of Filing, Exhibit 9. As stated above, Ms. Pike pursued relief in the Court of Criminal Appeals, which was denied by an Order entered May 17, 2024. *See* Notice of Filing, Exhibit 10.

FACTS RELEVANT TO THE QUESTIONS PRESENTED

Christa Pike was sentenced to death in 1996 for the murder of Colleen Slemmer in January 1995, when Ms. Pike was 18 years old. If executed, as the Tennessee Attorney General and Reporter has

[2] Ms. Pike attempted to withdraw her post-conviction petition while incarcerated in solitary confinement and suffering from undiagnosed Bipolar and Post-Traumatic Stress Disorders. On appeal from the post-conviction court's decision to permit her to abandon post-conviction, this Court determined that Ms. Pike timely withdrew her request and could reinstate her petition. *Pike v. State*, 164 S.W.3d 257 (Tenn. 2005).

requested,[3] Ms. Pike would be the sole Tennessean in the modern era to be executed for actions committed when she was only 18 years old. She would also be the first woman Tennessee has executed in over 200 years.

A. Science has established the significant differences between the adolescent and adult brain.

Adolescence is a distinct period of development that begins with the onset of puberty (which typically occurs between the ages of 10 and 12) and ends in the mid-20s. Notice of Filing, Exhibit 1, Appendix 1 (Gallagher amicus brief), at 15 (citation omitted).[4] "Researchers have consistently identified changes in the structural and functional development of the brain in adolescence." *Id.* (citation omitted). "There are just as many, if not more, differences between adolescents and adults as there are between adolescents and children, and the differences between adolescents and adults are often more striking than the differences between adolescents and children." *Id.* (citation omitted)

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[3] The Attorney General's motion was filed on August 27, 2020. *See* Case No. M2020–01156–SC–DPE–DD. Ms. Pike filed her response on June 7, 2021, asking this Court to refrain from scheduling an execution pending disposition of her Petition in the Inter-American Commission on Human Rights or to issue a certificate of commutation recommending that the Governor commute her sentence to life/life without possibility of parole, the sentence imposed on all other (nearly 200) female individuals in Tennessee convicted of first-degree murders. *Id.*

[4] This citation is a report from a National Academies of Sciences, Engineering, and Medicine published in 2019. All the citations in the Gallagher Brief cited herein were published between 2009 and 2019. *Roper v. Simmons*, 543 U.S. 551 (2005) was issued nearly 20 years ago.

The adolescent brain "is significantly less mature, both in its structure and in its ability to utilize that structure efficiently." *Id.*, at 16 (citation omitted). This has a profound impact on learning and behavior during adolescence. "The brain systems in which these structural and functional changes take place during adolescence are involved in important cognitive, emotional, social and motivational processes." *Id.* (citation omitted). "These changes result in significant deficits in important skills affecting legally relevant constructs such as planning, decision-making and impulse control." *Id.* (citation omitted).

"The primary brain regions affected during adolescence are the limbic system, which regulates emotional arousal, and the prefrontal cortex, which regulates self-control and rational decision-making." *Id.*, at 18. There is a scientific consensus that the longer maturation time for the development of the prefrontal cortex creates an imbalance that "has a profound effect on thinking and behavior." *Id.* at 19 (citation omitted). The changes follow an identifiable pattern consistent with adolescent behavioral changes. *Id.* Only when both the limbic system and prefrontal cortex have completed development and "become fully interconnected is development complete." *Id.* These changes are not complete until the early to mid-twenties. *Id.*

The adolescent brain is more easily emotionally aroused and sensitive to social rewards by peer approval. *Id.*, at 21. It is also less sensitive to negative outcomes—leading to adolescents seeking intense and exciting experiences while discounting negative consequences. *Id.*, at 21–22. Also, the amygdala in the adolescent brain is undergoing

significant changes which lead to being more fearless and prone to impulsive responses to threats. *Id.*

The "executive functions" in the brain, known as its "braking system" are not fully in place in the adolescent brain. *Id.*, at 24. The prefrontal cortex can be easily derailed by emotional arousal or fatigue, which leads to difficulties with self-control when adolescents become upset, excited or tired. *Id.* "Under such circumstances, they are more likely to engage in risky behavior and make decisions without considering the consequences of their actions." *Id.*, at 25.

In 2013, a panel organized by the National Research Council reviewed the science on adolescent development and came to three primary conclusions. *Id.*, at 29. First, "in emotionally charged situations, adolescents do not have a mature capacity for self-regulation compared to adults." *Id.*, at 29–30 (citation omitted). "Self-regulation is the process by which individuals initiate, adjust, interrupt, stop, or otherwise change thoughts, feelings, or actions in order to achieve personal goals or plans." *Id.*, at 30 (citation omitted). "[S]elf-regulation requires the capacity to inhibit impulses." *Id.* Second, "adolescents are much more vulnerable to peer influence and immediate incentives" than adults. *Id.* (citation omitted). Third, "adolescents lack time perspective, impairing their ability to make judgments and decisions that require future orientation." *Id.*, at 32 (citation omitted).

"In key ways, the brain doesn't look like that of an adult until the early 20s." *See* Notice of Filing, Exhibit 1, Appendix 2 (Declaration on Behalf of the American Academy of Pediatric Neuropsychology), at 5

(quoting a 2011 publication of the National Institute of Mental Health titled *The teen brain: Still under construction*). With regard to recent neuroscience findings, "... the results push the timeline of brain maturation into adolescence and young adulthood. In terms of the volume of gray matter seen in brain images, the brain does not begin to resemble that of an adult until the early 20s." *Id.*

"There is no clear way to differentiate the functioning of the brains of 17-year-olds from those aged 18, 19, and 20 in terms of risk taking behaviors, the ability to anticipate the consequences of their actions … to evaluate and avoid negative influences of others, and to demonstrate fully formed characterological traits not subject to substantive change….". *Id.*, at 3. "The key aspects of brain development governing these abilities and characteristics simply are not yet mature or fully functional until sometime after the age of 21." *Id.* Thus, there is no "scientific basis upon which to draw a significant distinction in the neuropsychological abilities of the 18-20 versus 17-year-olds that would make them more culpable in the face of such criminal charges that could lead to a sentence of death." *Id.*, at 13.

B. Christa Pike committed her offense as an adolescent with a severely compromised brain.

In January 1995, when Christa Pike, Tadaryl Shipp, and Shadolla Peterson attacked Colleen Slemmer, intending to scare her in an assault that escalated into murder, "Christa was just 18 years old, with a brain that was not yet fully developed." *See* Notice of Filing, Exhibit 1, Appendix 3 (Report of Dr. Bethany Brand), at 34. Prior to full brain

maturation, "youth do not have the ability to think through impulses, fully consider the consequences of their actions, nor 'put the brakes on' their intense behavioral impulses." *Id.*

In addition to sharing the characteristics of other adolescents with under-developed brains, "Christa was experiencing untreated intense bipolar emotional reactivity" and was "very likely" manic or hypomanic at the time. *Id.* She was also "suffering from untreated trauma and PTSD." *Id.* "At 18 years old, her immature, traumatized brain made her exceptionally vulnerable to impulses and extremely poor decisions." *Id.*, at 37. "Unmedicated and untreated, she was not able to put the 'brakes on' her bipolar- and trauma-triggered emotions." *Id.*

C. The execution of Christa Pike would be an extreme statistical outlier.

Data collected by the Office of the Post-Conviction Defender (OPCD) identifies 200 women who have been convicted of, or pled guilty to, first degree murder in Tennessee since 1976. *See* Notice of Filing, Exhibit 1, Appendix 4, Affidavit of Alicia Gullo. Of those, only Christa Pike is currently under a death sentence. *Id.*, at Exhibit B (Code PHE1).

Of the 200 women found guilty of first degree murder, the State sought the death penalty for only 19. *See Id.*, at ¶6. Six of those death notices were subsequently withdrawn. *Id.* Only two of those cases have resulted in a death sentence—Ms. Pike and Gaile Owens. *Id.* Ms. Owens' sentence was commuted to life in 2010, and she was later released on

parole. There have been no other sustained death sentences for women in Tennessee since the end of slavery.[5]

Of the 200 women first degree murder offenders, there are 23 women in the database who were convicted of killing more than one victim. *See Id.*, Appendix 4, Exhibit B (Codes CCA2 and CCA3). Seventeen of the women killed two victims and six killed at least three victims. *Id.* (Codes CCA2 and CCA3 respectively). Of the 23 women who killed more than one victim, four are serving life without parole sentences and 19 are serving life sentences. *Id.* (Codes PHE2 and PHE3 respectively).

If Ms. Pike is executed, she would be the only person Tennessee has executed in the modern era (post-*Furman*, issued in 1972) who was 18 years old at the time of the offense. More than 3,100 people in Tennessee have been convicted of first degree homicide.[6] Of those thousands, only

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[5] *See* Executions in the U.S. 1608–2002, Espy File, available at https://deathpenaltyinfo.org/executions/executions-overview/executions-in-the-u-s-1608-2002-the-espy-file (last visited July 10, 2024). Historical research identifies only three women executed in the State of Tennessee, ever. All three were executed between 1807–1819. The Espy database identifies four executions of women: 1) March 20, 1807, hanging of Molly Holcomb, a Black female; 2) 1808 hanging of an unnamed Black female; 3) 1819 hanging of an unnamed Black female, and 4) 1820 hanging of Eve Martin, race unknown, for accessory to murder. However, Eve Martin was incorrectly included—she was the victim of a homicide, not an accessory. *See* David V. Baker, *Women and Capital Punishment in the United States: An Analytical History*, 132 (McFarland, 2015).

[6] The OPCD maintains a database of first degree murder cases containing the Administrative Office of the Courts (AOC) Rule 12 and TDOC data, as well as data from criminal court files we have collected. The project

eight were 18 years old at the time of offense and death-sentenced.[7] All seven male death sentences predated Ms. Pike's, and all have subsequently been vacated.[8]

Name	Age	Race	Gender	Offense Year
David Duncan	18	Black	Male	1981
Tony Bobo	18	Black	Male	1983
David Poe	18	White	Male	1986
Michael Dean Bush	18	White	Male	1988
Roosevelt Bigbee	18	Black	Male	1989
Derrick Johnson	18	Black	Male	1990
Frederick Sledge	18	Black	Male	1991
Christa Pike	18	White	Female	1995

Ms. Pike is the last 18-year-old offender to be sentenced to death in Tennessee.

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manager responsible for overseeing the data collection and entry left the OPCD in December 2022; therefore, additional recent first degree murder cases have yet to be entered, which will increase the actual number. *See* Notice of Filing, Ex. 1, Appendix 4, at ¶5. The database does now include available information from a recent first degree murder disposition—that of Michael Cummins on August 16, 2023, who pled guilty to the murder of eight people—pending completion of a Rule 12 form and the addition of that data to the AOC online database. *Id.*, at ¶5.

[7] In order of the year of offense, the eight include seven men—David Duncan (1981), Tony Bobo (1983), David Poe (1986), Michael Dean Bush (1988), Roosevelt Bigbee (1989), Derrick Johnson (1990), and Frederick Sledge (1991)—and one woman, Christa Pike (1995).

[8] *See* Notice of Filing, Ex. 1, Appendix 4 (Affidavit of Alicia Gullo), at ¶¶15–17.

Finally, the number of death sentences per year in Tennessee is dramatically decreasing. In the last decade, only six people have been death-sentenced and those men's ages at the time of offense range from 26 to 39 years old.

REASONS SUPPORTING REVIEW

This Court should grant review to secure settlement of an important question of constitutional law and to settle a question of public interest in this capital case. The act of the State extinguishing the life of one of its citizens places a grave responsibility on this Court to ensure that any execution comports with the demands of the Eighth Amendment and Article I, § 16 of the Tennessee Constitution. This Court in *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022) applied an Eighth Amendment analysis to young persons up to the age of 17 years and 364 days old; given the scientific consensus on the development of the adolescent brain, this analysis must apply with equal force to Christa Pike at age 18. Accordingly, her motion to reopen post-conviction proceedings should be granted and this case remanded for an evidentiary hearing.

In the alternative, and against the unique—indeed, singular—combination of Ms. Pike's gender and age at the time of offense, this Court should grant review and find that execution of her death sentence would violate Article I, § 16 of the Tennessee Constitution and the Eighth Amendment and therefore the death sentence should be vacated.[9]

[9] The Court of Criminal Appeals erroneously held that this issue was not before the post-conviction court and could not serve as a basis of a motion

STANDARD OF REVIEW

A motion to reopen an original post-conviction petition should be granted when, in pertinent part, the "motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial" and it "appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have ... the sentence reduced." Tenn. Code Ann. § 40–30–117(a)(1), (4). This Court reviews the denial of a motion to reopen upon an abuse of discretion standard. Tenn. Code Ann. § 40–30–117(c). A trial court abuses its discretion when it applies an incorrect legal standard, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the evidence, or applies reasoning that causes an injustice to the movant. *See*, *e.g.*, *State v. Jordan*, 325 S.W.3d 1, 39 (Tenn. 2010). A trial court also abuses its discretion when it fails to consider the relevant factors provided by higher courts as guidance for determining an issue. *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007).

When a trial court abuses its discretion by denying a motion to reopen, a reviewing court "shall remand the matter to the trial court for further proceedings." Tenn. Code Ann. § 40–30–117(c); *see also* Tenn. Sup. Ct. R. 28 § 10(B). In this matter, the trial court's finding that Ms. Pike is an adult for purposes of her death sentence is an illogical

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to reopen. *See* Notice of Filing, Exhibit 10, at p. 3. This issue was clearly presented to the post-conviction court. *See* Notice of Filing, Exhibit 1, at p. 16–21; Exhibit 9, at p. 5–9.

conclusion based on an erroneous assessment of her age that contravenes both the principles of *Booker* and the science which animates those and disregards *Booker*'s proportionality edict.

In her motion to reopen, Ms. Pike raised issues regarding the constitutionality of her sentence in light of *Booker*'s proportionality requirement. Issues of a constitutional dimension are questions of law, which are reviewed de novo with no presumption of correctness given to the legal conclusions of the courts below. *Booker*, 656 S.W.3d at 56; *State v. White* 362 S.W.3d 559, 565 (Tenn. 2012); *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008). Further, in the post-conviction court, Ms. Pike asserted that the threshold standard she was required to meet in this capital case was whether she had established a colorable claim which entitled her to proceed to an evidentiary hearing. *See* Notice of Filing, Exhibit 1, Motion to Reopen Petition for Post-Conviction Relief, at p. 22; *Id.*, Exhibit 8, Reply to State's Response to Petitioner's Motion to Reopen Petition for Post-Conviction Relief, at p. 2–4, 9. The post-conviction court applied the colorable claim standard in denying Ms. Pike's motion. *See* Notice of Filing, Exhibit 9, Order Denying Motion to Reopen, at p. 6. This Court should review the finding that Ms. Pike did not establish a colorable claim in this capital case under the heightened due process analysis set forth in *Howell v. State*, 151 S.W.3d 450, 453 (Tenn. 2004).

A. *BOOKER* ESTABLISHED THE FRAMEWORK FOR THE PROPORTIONATE SENTENCING OF YOUTHFUL OFFENDERS UNDER THE EIGHTH AMENDMENT.

In *Booker*, this Court held that "juveniles are constitutionally different than adults for sentencing purposes; juveniles have lesser culpability and greater amenability to rehabilitation." 656 S.W.3d at 65. "Retribution, incapacitation, deterrence, and rehabilitation provide little support for either the death penalty or life-without-parole sentences once a court considers that juveniles, in general, have diminished culpability, are unlikely to contemplate the potential for punishment before acting, and cannot with reliability be classified as incorrigible or irredeemable at such a young age." *Id.* at 84 (Kirby, J., concurring). These guidelines did not exist as legal principles when Ms. Pike was sentenced to death for an offense she committed when she was 18 years old.[10]

Booker recognized the constitutional principle that "youth matters" in sentencing. *Id*. at 60. The Court distilled "three essential rules" from a line of cases involving youths sentenced to death or life imprisonment issued by the Supreme Court of the United States.[11] *Id.* In interpreting

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[10] *See, e.g., Stanford v. Kentucky*, 492 U.S. 361 (1989) (imposition of capital punishment on an individual for a crime committed at 16 or 17 years of age did not violate evolving standards of decency and thus did not constitute cruel and unusual punishment under the Eighth Amendment), abrogated by *Roper v. Simmons*, 543 U.S. 551 (2005).

[11] The primary cases cited by the Court are *Thompson v. Oklahoma*, 487 U.S. 815 (1988); *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).

the Eighth Amendment requirement of proportionality, this Court found these three principles apply to sentencing Tennessee youths: 1) the Eighth Amendment prescribes that punishment be graduated and proportionate; 2) states must minimize the risk of a disproportionate sentence when youths are facing imposition of the harshest punishments (including life imprisonment and the death penalty); and 3) a sentencing entity must take the mitigating qualities of youth into account by considering (a) the youth's "lack of maturity" and "underdeveloped sense of responsibility," which can lead to "recklessness, impulsivity, and heedless risk-taking"; (b) the youth's vulnerability and susceptibility to negative influences and outside pressure, as from family and peers; and (c) the fluidity of the development of the youth's character and personal traits. *Id.* These precepts are based on science. *See Miller v. Alabama*, 567 U.S. 460, 471–72 (2012). "The distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 472.

In its opinion, the *Booker* Court detailed the mitigation proof presented at Mr. Booker's juvenile transfer hearing, at trial, and at the hearing on the motion for new trial[12] to highlight why consideration of youth in sentencing is crucial. 656 S.W.3d. at 64. While the trial court

[12] Mr. Booker grew up in a poor, unstable, and chaotic environment in which violence was common. 656 S.W.3d. at 64. He was physically and emotionally mistreated by a parent and saw his mother being abused. *Id.* He lived door to door during times when his mother kicked him out and he suffered the loss of a grandparent with whom he was close. *Id.* Mr. Booker suffered from Post-Traumatic Stress Disorder. *Id.* at 65.

imposed a mandatory sentence for Mr. Booker's murder conviction, it considered Mr. Booker's youth in sentencing for his especially aggravated robbery conviction and imposed a mid-range sentence rather than the harshest available. *Id.* Mr. Booker presented expert testimony about adolescent brain development establishing that "parts of the brain that inhibit and regulate" drives pertaining to emotions, arousal, and reward sensitivity "do not fully develop until age twenty to twenty-five." *Id.* "Mr. Booker's post-traumatic stress disorder exacerbated this disparity—making the brain's 'alarm system' overly sensitive to threats, bypassing adaptive responses like judgment and executive functioning, and hijacking the brain into a state of 'fight, flight, or freeze.'" *Id.*

The *Booker* Court noted that "a young person like Mr. Booker, is more impulsive, a bigger risk-taker, and has poor judgment." *Id.* The fact that his background "failed to provide him stability and security" "only increased the likelihood that he would make rash, reckless, and impulsive decisions." *Id.* Mr. Booker was entitled to relief from his automatic life sentence because these circumstances were not considered at sentencing for the murder conviction. *Id.*

This Court determined that Tennessee's automatic life sentence was not supported by sufficient penological objectives when imposed on a juvenile. *Id.* (citing *Miller*, 567 U.S. at 472–74). The penological objectives driving sentencing decisions ("retribution, deterrence, preventing crime through incarceration, and rehabilitation") simply cannot be applied to a juvenile as they are an adult. *Id.* The retributive objective is reduced with a juvenile because of reduced culpability. *Id.*

(citing *Miller*, 567 U.S. at 471–72). Deterrence "is not effective because 'the same characteristics that render juveniles less culpable than adults'—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* (internal citations omitted). "The benefit of preventing crime through incarceration is no justification—since it necessarily implies that the 'juvenile offender forever will be a danger to society' because he is incorrigible, and 'incorrigibility is inconsistent with youth.'" *Id.* (internal citations omitted). "The justification of rehabilitation also fails because Tennessee's automatic life sentence," like Tennessee's death penalty, "rejects the notion that a juvenile should have the chance to change and mature." *Id.* (internal citations omitted). Thus, this Court found that Mr. Booker's life sentence was not supported by sufficient penological objectives and that Tennessee's mandatory fifty-one- to sixty-year sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. *Id.* at 66.

Booker stands for the proposition that a life sentence for a 17-year-old cannot be supported by sufficient penological objectives to meet Eighth Amendment standards. The even more extreme punishment of death for an 18-year-old similarly cannot be justified.

B. AS OTHER COURTS HAVE RECOGNIZED, THE CLEAR SCIENTIFIC CONSENSUS UNDERPINNING *BOOKER* INCLUDES INDIVIDUALS IN LATE ADOLESCENCE.

Ms. Pike was 18 years old when the crime was committed. There is no meaningful difference in the brain of a 17-year-old and the brain of an

18-year-old. There is clear scientific consensus that late adolescence, including the age of 18, is a key stage of development characterized by significant brain, behavioral, and psychological change. *See*, *e.g.*, *People v. Parks*, 987 N.W.2d 161, 249 (Mich. 2022) (holding that mandatory life without parole for youths who are 18 years old violates the Michigan Constitution's ban on "cruel or unusual" punishment). "This period of late adolescence is a pivotal developmental stage that shares key hallmarks of adolescence." *Id.* The scientific consensus arises from "a multitude of reliable studies on adolescent brain and behavioral development in the years following" the *Roper*, *Graham*, and *Miller* decisions.[13] *Id.*

The science establishes that "the inherent malleability and plasticity of late-adolescent brains are features that are similar to those that the *Miller* Court found relevant to its culpability analysis" which was "the basis of *Miller*'s prohibition on mandatory life-without-parole sentences for adolescent defendants." *Id.* at 249–50. The United States Supreme Court, in *Miller* and the other cases cited in *Booker*, consistently relied on brain science and research in reaching its conclusions regarding punishment of youths. *See, e.g.*, *Roper*, 543 U.S. at 569–74; *Graham*, 560 U.S. at 67–69; *Miller*, 567 U.S. at 471–79. This Court acknowledged this in *Booker*. "One consistent thread running through the Supreme Court's decisions is that 'children are constitutionally different from adults for purposes of sentencing.'" *Booker*, 656 S.W.3d at 63. "These differences include a child's 'lack of maturity and an underdeveloped sense of

[13] *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).

responsibility,' which 'often result in impetuous and ill-considered actions and decisions.'" *Id.* at 63–64. "In addition, a juvenile's brain and character traits are not fully developed, and a juvenile is particularly 'susceptible to negative influences and outside pressures.'" *Id.* at 64. "These factors bear directly on a juvenile's culpability." *Id.*

Based on the same science that led the United States Supreme Court and this Court to categorically exclude those under the age of 18 years old from the death penalty courts should abandon the arbitrary and unscientific distinction between adolescence and late adolescence for sentencing purposes. Neuroimaging has revealed that the reward pathways of the brain develop early in adolescence, while the prefrontal cortex, which plays a central role in higher cognitive abilities (such as cognitive control and behavioral regulation), gradually matures until the early twenties. *See, e.g.*, B.J. Casey *et al.*, *The Adolescent Brain*, 28 Dev. Rev. 62 (2008); Elizabeth P. Shulman et al., *The Dual Systems Model: Review, Reappraisal, and Reaffirmation*, 17 Developmental Cognitive Neuroscience 103, 103, 111, 114 (2016) (collecting studies); Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101:21 Proceedings of the National Academy of Science 8174, 8177 (2004). Consistent with that neuroimaging, 18- to 20-year-olds "show[] diminished cognitive control under both brief and prolonged negative emotional arousal relative to slightly older adults." Alexandra O. Cohen *et al.*, *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psychol. Sci. 549, 559 (2016).

The Michigan Supreme Court found that neurological science has established that exceptional neuroplasticity is the "key characteristic of the adolescent brain." *People v. Parks*, 987 N.W.2d at 250. During the adolescent period, the youth's brain is essentially rewiring itself and developing cognitively. *Id.* This crucial stage of cognitive development "has significant consequences for young adults' behavior." *Id.* Research has established "that late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead." *Id.* Late adolescence (ages 18 through 20) is "characterized by impulsivity, recklessness, and risk-taking, as evidenced by the heightened incidents of drunk driving, unintended pregnancies, binge drinking, and arrests…." *Id.* The prefrontal cortex is the last region of the brain to develop, and it is "responsible for risk-weighing and understanding consequences." *Id.* at 251. In other words, the exact characteristics of adolescents that created constitutional concerns in *Miller* and *Booker*, exist in 18- to 20-year-olds as well, without distinction.

Given their still-developing brains, late adolescents, like Ms. Pike, are more susceptible to negative influences, including peer pressure, which increases their risk-taking and deficits in decision-making. *Id.* Late adolescents often behave more similarly to 14- and 15-year-old youths than to an adult. *Id.* Due to these characteristics of a still-developing brain, late adolescents are less fixed in their characteristics and more susceptible to change as they age. *Id.*

The American Academy of Pediatric Neuropsychology (AAPdN) has called for State[14] and Federal governments to ban application of death as a penalty for 18- to 20-year-olds because there is no scientific basis for the cut off age of 18.[15] The same restrictions regarding the "application of the death penalty to persons aged 17 should apply to persons ages 18 through 20 years and for the same scientific reasons." Notice of Filing, Exhibit 1, at Appendix 2 (Declaration On Behalf Of The American Academy of Pediatric Neuropsychology), at p. 3. This is because:

> The maturation of the juvenile brain is not fully complete until the mid-20s. While academics continue to debate the exact age of brain maturation, it is clear that this does not happen until after age 20. There is no clear way to differentiate the functioning of the brains of 17-year-olds from those aged 18, 19, and 20 in terms of risk taking behaviors, the ability to anticipate the consequences of their actions (i.e.,

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[14] The AAPdN specifically asks the Tennessee courts and other Tennessee authorities "to refrain from executing any person whose capital offense was committed prior to the age of 21 years" given "the current scientific understanding of adolescent brain development." *See* Notice of Filing, Ex. 1, at Appendix 2 (Declaration On Behalf Of The American Academy Of Pediatric Neuropsychology), at p. 15.

[15] The AAPdN is joined by other organizations, including the American Bar Association, in calling for a prohibition of imposing death or execution of any individuals who were in late adolescence at the time of offense. *See* Notice of Filing, Ex. 1, at Appendix 2, at p. 14–15. The American Bar Association's Resolution was based upon "the overwhelming legal, scientific, and societal changes of the last three decades." *See* Late-Adolescent Death Penalty Resolution (2018) and Report, at p. 3, available at https://www.americanbar.org/groups/committees/death_penalty_representation/resources/dp-policy/late-adolescent-death-penalty-resolution/ (last visited July 10, 2024).

> engage in a cost-benefit analysis), to evaluate and avoid negative influences of others, and to demonstrate fully formed characterological traits not subject to substantive change over the next decade of their lives. The key aspects of brain development governing these abilities and characteristics simply are not yet mature or fully functional until sometime after the age of 21.

Id.

The American Psychological Association (APA) similarly has issued a Resolution calling upon the courts and the state and federal legislative bodies of the United States to ban the application of the death sentence as a criminal penalty where the offense is alleged to have been committed by a person under 21 years of age. *See* APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known As the Late Adolescent Class (2022).[16] The APA noted that in *Roper*, the Supreme Court of the United States relied upon and cited the APA amicus curiae brief often and favorably. *Id.*, at p. 1. The APA concluded that "based upon the current state of the psychological and related developmental sciences, … there is no neuroscientific bright line regarding brain development that indicates the brains of 18- to 20-year-olds differ in any substantive way from those of 17-year-olds." *Id.* Accordingly, "[t]he same scientific and societal reasons as given by the *Roper* court in banning death as a penalty for those under the age of 18 apply to the late adolescent class." *Id.*, at p. 3.

[16] The report is available at https://www.apa.org/about/policy/resolution-death-penalty.pdf (last visited July 10, 2024).

The Michigan Supreme Court followed this guidance and found that current science establishes that late-adolescent brains are far more similar to "juvenile brains" as described in *Miller* than mature adults. *People v. Parks*, 987 N.W.2d at 252. The *Parks* Court acknowledged that "there is no meaningful distinction between those who are 17 years old and those who are 18 years old" regardless of Michigan's designation of the age of 18 as an adult for purposes of that state's juvenile justice system. *Id.* The Court noted that the "evolving understanding of a juvenile's neurological and psychological development is reflected generally in Michigan statutory provisions governing young adults" such as prohibitions on 18-year-olds from purchasing, consuming, or possessing alcohol. *Id.*[17]

As the *Parks* Court acknowledged, other courts have embraced the scientific consensus regarding late-adolescent brains and determined that the State's harshest punishments are prohibited. The Washington Supreme Court has found, in *Matter of Monschke*, 482 P.3d 276 (Wash. 2021), that mandatory life without parole sentences for youths who are 19 or 20 years old violates the Washington Constitution's ban on "cruel punishment." The court found that "no meaningful neurological bright line exists between age 17 and age 18…." *Id.* at 287. *See also United States v. Lara*, No. 95–CR–75–08–JJM–PAS, 2023 WL 2305938 (D.R.I. March 1, 2023) (the 18-year-old defendant was sentenced to life

[17] Tennessee also precludes the purchase, consumption, possession, and transportation of alcohol by anyone under the age of 21. Tenn. Code Ann. § 1–3–113. The same statute also applies to tobacco, smoking hemp, and vapor products. *Id.*

imprisonment for a carjacking resulting in the victim's death in 1997 but his youth and other factors justified a sentence reduction after twenty-eight years of imprisonment). The *Lara* court, citing *Booker*, reasoned that in "the last two decades, scientists, society, and the courts have all recognized that youthful offenders have a different level of culpability than do adult offenders." *Id.* at *8. "This realization is especially true when the youthful offender receives an irrevocable sentence of life imprisonment." *Id.*

Similarly, in *Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024), the Supreme Judicial Court of Massachusetts held that sufficient evidence supported findings that late adolescents between the ages of 18 to 20 years old:

1) were neurologically similar to juveniles with regard to impulse control;

2) were neurologically similar to juveniles with regard to risk-taking in pursuit of reward;

3) were neurologically similar to juveniles with regard to peer influence; and

4) were neurologically similar to juveniles with regard to capacity for change.

224 N.E.3d at 225–29. The *Mattis* Court determined that contemporary standards of decency reflected in the statutes of Massachusetts and other states did not support imposing sentences of life in prison without possibility of parole on offenders ages 18 to 20. *Id.* at 229–34. The Court held that the appropriate remedy for late adolescents serving life without possibility of parole was amending their sentences to reflect the next

most severe penalty in effect at time of offense, namely, life in prison with parole eligibility in 15 years. *Id.* at 235–37.

In *People v. Carrasquillo*, an Illinois appellate court addressed a successive petition for post-conviction relief in which the petitioner, who was 18 years old at the time he murdered a Chicago police officer, claimed that his indeterminate sentence of 200 to 600 years was disproportionate because it was entered without adequate consideration of his youth and its attendant characteristics. *People v. Carrasquillo*, 2023 IL App (1st) 211241, 2023 WL 5314496, at *1 (Ill. App. 1 Dist. 2023). The lower court originally denied leave to file the successive petition but the appellate court in 2020 reversed that decision and remanded to give the petitioner an opportunity to submit evidence on his claims. *Id.* The trial court accordingly held an evidentiary hearing at which the court heard testimony from Mr. Carrasquillo, his friends, and family, and reviewed "a psychological evaluation from a clinical psychologist [Dr. Antoinette Kavanaugh] who opined that, at the time of his offense, Mr. Carrasquillo's brain development was functionally equivalent to that of a juvenile." *Id.* The trial court then denied the petition, finding that the state constitution's proportionate penalties clause was not violated since the petitioner was eligible for parole. Mr. Carrasquillo appealed that ruling.

Dr. Kavanaugh's report explained that "from a neurobiological perspective, 18-year-olds are more like adolescents than adults. Research demonstrates they are as likely to display the characteristics of youth such as the impulsivity, risk taking, and suggestibility to peer pressure as someone who is 17 years old." *Carrasquillo*, 2023 WL 5314496, at *3.

Dr. Kavanaugh found that "Mr. Carrasquillo's family and home life 'contained factors that negatively impact[] brain development in a manner that would have made him **less** developed than an 18-year-old who did not have similar experiences.'" *Id.* (Emphasis in report.) The trial court found that Dr. Kavanaugh's report was "quite compelling in its analysis as to the prevailing scientific community's understanding of juvenile maturity and brain development, and, specifically, as to petitioner's tragic upbringing and own immaturity at the time of the murder." *Id.* at *6. However, the court found the report would only be dispositive if the petitioner lacked an opportunity for parole and petitioner had many parole board hearings without receiving parole. *Id.*

The Illinois appellate court found that *Miller* and its progeny require that states "provide 'some meaningful opportunity to obtain release'" and petitioner was denied that since he had been denied parole for so many years and over 30 times. *Id.* at *11. Regarding application of *Miller* to the petitioner, the appellate court found that because petitioner was not a "juvenile," he was required to show how the *Miller* decision applied to his specific facts and circumstances. *Id.* at *11. The court found that Dr. Kavanaugh's report was sufficient to satisfy petitioner's burden to show that the sentencing protections provided by that case applied to him as a young adult offender. *Id.* at *12. Therefore, the appellate court vacated petitioner's sentence and remanded "for a new sentencing hearing where the court can consider Mr. Carrasquillo's youth and its attendant characteristics in determining his sentence." *Id.*

As *People v. Carrasquillo* and *Booker* illustrate, an adolescent brain can be further compromised by an individual's psychological and sociological circumstances. In *Booker*, the expert proof showed that adolescent brain development in "the parts of the brain that inhibit and regulate those drives do not fully develop until age twenty to twenty-five[,]" many years after other systems that "register emotions, arousal, and reward sensitivity" have fully developed. 656 S.W.3d at 65. "Mr. Booker's post-traumatic stress disorder exacerbated this disparity—making the brain's 'alarm system' overly sensitive to threats, bypassing adaptive responses like judgment and executive functioning, and hijacking the brain into a state of 'fight, flight, or freeze.'" *Id.* A "young person like Mr. Booker is more impulsive, a bigger risk-taker, and has poor judgment." *Id.* Mr. Booker's background "only increased the likelihood that he would make rash, reckless, and impulsive decisions." *Id.*

Like Mr. Booker, Ms. Pike's abilities to control "impetuous and ill-considered actions and decisions," 656 S.W.3d at 64, were even more diminished than the average person her age. *See* Notice of Filing, Exhibit 1, Appendix 3 (Report of Dr. Bethany Brand). Ms. Pike had a horrific childhood. Before she was even born, she suffered brain damage. She endured abuse, neglect, violent rapes, and suffered from severe mental illness—Bipolar Disorder and Post-Traumatic Stress Disorder—which were not diagnosed until adulthood. At age 18, Ms. Pike's brain "was not yet fully developed" and would not be until her mid-20s. *Id.*, at p. 34. Her "immature, traumatized brain made her exceptionally vulnerable to impulses and extremely poor decisions. Unmedicated and untreated, she

was not able to put the 'brakes on' her bipolar- and trauma-triggered emotions." Notice of Filing, Exhibit 1, Appendix 3, at p. 37.[18]

C. THE TRIAL COURT'S DENIAL AND DISMISSAL OF MS. PIKE'S MOTION TO REOPEN CONTRAVENES THE PRINCIPLES IN *BOOKER*. MS. PIKE'S DEATH SENTENCE IS DISPROPORTIONATE UNDER THE EIGHTH AMENDMENT AND ARTICLE I, § 16 OF THE TENNESSEE CONSTITUTION.

The trial court denied Ms. Pike's motion to reopen stating that she "was 18 years old, not a juvenile, at the time of the offenses..." and "*Booker* applies to only juveniles…." Notice of Filing, Exhibit 9, at p. 6–7. The Court of Criminal Appeals similarly found that *Booker* relief is limited to juveniles. *See* Notice of Filing, Exhibit 10, at p. 3. The simplistic rigidity of this ruling ignores all of the undisputed science detailed above, the indistinguishable nature of 17- and 18-year-old brains, and the coexistence of Ms. Pike's age, trauma, and mental illness.

The ruling also misunderstands *Booker*. The trial court cites two passages in *Booker* that purport to limit its reach "only to juveniles, not adults," but those passages refer to the specific granting of individualized parole hearings for juveniles sentenced to automatic life sentences and not the Court's overarching finding of an Eighth Amendment violation.

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[18] Dr. Brand notes that "after years of psychotherapy and medications to treat mental illness," Christa "exhibits deep remorse for her actions that resulted in Colleen Slemmer's death." She "has matured and learned to process her trauma, and is truly a different person than she was at the time of the murder." *See* Notice of Filing, Exhibit 1, Appendix 3, at p. 37.

Id., at p. 5 (*quoting Booker*, 656 S.W.3d at 66–68). At no time does the *Booker* court specifically define "juvenile" as only those under the age of 18. Instead, the Court consistently notes its objection to sentencing procedures that do not take into account the age of the offender. *Booker,* 656 S.W.3d at 64–67.

The guidance of *Booker* and the clear scientific consensus require a finding that Ms. Pike is ineligible for the death penalty. As noted above, there is no scientific reason that the three essential rules the *Booker* court derived from the United States Supreme Court's rulings are applicable to a 17-year-old, but not to an 18-year-old. Ms. Pike's punishment is not graduated or proportionate. Nothing in Ms. Pike's sentencing sought to minimize her risk of a disproportionate sentence. Ms. Pike's youth, as youth has been understood since *Miller* and as it is understood in *Booker*, was not taken into account.

No sentence is more irrevocable than a death sentence. This Court has held that we must be mindful that "a sentence of death is final, irrevocable, and 'qualitatively different' than any other form or level of punishment." *Pike v. State*, 164 S.W.3d 257, 266 (Tenn. 2005) (citation omitted); *see also State v. Terry*, 813 S.W.2d 420, 425 (Tenn. 1991) ("Now it is settled law that the penalty of death is qualitatively different from any other sentence, and that **this qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed**.") (emphasis in original) (internal quotation marks and citations omitted). Accordingly, there is a "correspondingly greater degree of scrutiny" in these cases. *Smith v.*

State, 357 S.W.3d 322, 346 (Tenn. 2011) (quoting *California v. Ramos,* 463 U.S. 992, 998–99 (1983)).[19]

The science that animates *Roper*'s (and *Booker*'s) logic extends to 18-year-olds, particularly in the case of an 18-year-old facing execution, since "[r]ecent research in neuroscience and developmental psychology indicates that individuals between the ages of 18 and 21 share many of the[] same characteristics" identified in *Roper*. *Pike v. Gross*, 936 F.3d at 385 (6th Cir. 2019) (Stranch, J., concurring). *See also* Notice of Filing, Exhibit 1, Appendix 1, Brief of *Amicus Curiae* Julie A. Gallagher, Psy.D. ABPP, in Support of Appellant Tyshon Booker.

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[19] The Tennessee Courts have guaranteed access to open courts to adjudicate claims in death penalty cases particularly. This Court stated in 1826: "The maxim of the law is, that there is no wrong without a remedy...." *Bob, a slave v. The State*, 10 Tenn. 173, 176 (1826). *See also State v. Johnson*, 569 S.W.2d 808, 814 (Tenn. 1978) (relying on *Bob* and applying the same principle). "Should error intervene to the prejudice of the person tried, and there be no remedy after judgment, the injury is twofold,—a barbarous example of the execution of a human being ... or, perhaps some of the thousand accidental errors that are daily committed by higher courts, to whom belongs the administration of this branch of the law." *Bob*, 10 Tenn. at 182. The Tennessee Constitution provides that "all courts shall be open and every man, for an injury done him shall have remedy by due course of law, ..." Article I, § 17. As former Chief Justice Koch explains, this provision was "included in Tennessee's first constitution and has appeared virtually unmodified in every other version of our constitution.... [and] has a rich historical background that can be traced back more than eight centuries to the original 1215 version of Magna Carta." William C. Koch, Jr., *Reopening Tennessee's Open Courts Clause: A Historical Reconstruction of Article I, Section 17 of the Tennessee Constitution*, 27 U. Mem. L. Rev. 333, 340 (1997). The purpose of this constitutional provision is "to ensure that all persons would have access to justice through the courts." *Id.* at 341.

How society treats 18- to 20-year-olds—both generally and as criminal offenders, underscores the arbitrariness of treating late adolescents different than 17-year-olds. States and the federal government "recognize 21 as the age of majority in a number of contexts," including with respect to purchase of alcohol, purchase of firearms, and secure immigration status. *Pike*, 936 F.3d at 385. Indeed, "the age of majority at common law was 21, and it was not until the 1970s that States enacted legislation to lower the age of majority to 18." *Id.* (quoting *NRA* v. *ATF*, 700 F.3d 185, 201 (5th Cir. 2012)) (internal quotation marks omitted). Society increasingly eschews the death penalty for offenders in that age category as well. Since *Roper*, the number of 18- to 20-year-olds receiving death sentences continues to decline and youthful offenders "are increasingly unlikely to receive death sentences when compared to older homicide offenders." John H. Blume et al., *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles From Eighteen to Twenty-One*, 98 Tex. L. Rev. 921, 940 (2020).

Subsequent to *Roper*, in *Hall v. Florida*, 572 U.S. 701 (2014), and again in *Moore v. Texas*, 581 U.S. 1 (2017) the Supreme Court, concerned with the "unacceptable risk" that a defendant lacking the requisite culpability might receive a death sentence, *id.* at 704, highlighted the constitutional imperative to afford due weight to the teachings of the scientific community, *id.* at 712. Where a scientific consensus supports a defendant's lesser culpability, "[p]ersons facing that most severe sanction [the death penalty] must have a fair opportunity to show that the

Constitution prohibits their execution." *Id.* at 723. *Hall* and *Moore* require significant deference to the consensus of the scientific community when evaluating the Eighth Amendment's bar on cruel and unusual punishments.

In the nearly two decades since *Roper*, the science of late-adolescent brain development has advanced markedly. A new consensus has developed, including in those areas emphasized by *Roper* itself as indicative of constitutionally significant lesser culpability: lack of maturity and undeveloped sense of responsibility, greater vulnerability to negative influences and outside pressures, and inchoate character development, *id*. at 569–70. As now understood, the brain may continue to develop into the early 20s. Accordingly, the exemption *Roper* created for persons under the age of 18 has been left behind by advancements in the science on which it rested and should be updated, as *Hall* and *Moore* require, to afford appropriate weight to the consensus of medical experts.

Also, since *Roper*, the use of the death penalty in this country has continued to evolve. The objective indicia of community standards endorsed by the Supreme Court—such as its lack of use, in general or against particular classes of persons—demonstrate a steady movement away from executing persons under 21.

The Eighth Amendment draws its meaning from the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Objective indicators aid the Supreme Court's effort to determine whether a punishment practice or method is consistent with contemporary standards of decency. In *Roper*, for

example, the Court counted 30 states that rejected the death penalty for juvenile offenders—"12 that ha[d] rejected it altogether and 18 that maintain[ed] it but, by express provision or judicial interpretation, exclude[d] juveniles from its reach." *Roper*, 543 U.S. at 564; *see also Kennedy v. Louisiana*, 554 U.S. 407, 422 (2008) (noting the consistent approach of measuring the objective indicia of consensus).

In *Atkins v. Virginia*, 536 U.S. 304, 316 (2002), holding that intellectually disabled persons are exempt from execution, the Court looked beyond a narrow count of statutes. In addition to the 30 states that had formally barred the death penalty at the time of *Atkins*—either generally or specifically for those with intellectual disabilities—the Court also noted that although states like New Hampshire and New Jersey "continue[d] to authorize executions," neither one had performed an execution in decades, which meant "there [was] little need to pursue legislation barring the execution of the mentally retarded in those States." *Id.*; *see also Kennedy*, 554 U.S. at 433 ("There are measures of consensus other than legislation. Statistics about the number of executions may inform the consideration whether capital punishment for the crime of child rape is regarded as unacceptable in our society.").

And in *Hall*, 572 U.S. 701 (2014), the Court also indicated that long-term disuse coupled with executive action counted against the permissibility of a challenged punishment practice. *Id.* at 716 (placing on the abolitionist side of the "ledger" the "18 States that have abolished the death penalty, either in full or for new offenses, and Oregon, which has suspended the death penalty and executed only two individuals in the

past 40 years"). In each of these opinions, the Court recognized that the risk of cruel and unusual punishment was sufficient to warrant prohibiting the execution of an entire class.

Currently, of the fifty-two jurisdictions in the United States (fifty states, the District of Columbia, and the federal government), in 36 jurisdictions there is no reasonable likelihood possibility of executing a person who was 18 at the time of the offense. While a handful of jurisdictions continue to permit the imposition of capital punishment on 18-year-olds, most of these jurisdictions imposed those sentences during a period in the 1990's when youth was viewed as an aggravating rather than mitigating circumstance and/or imposed such sentences well before the new scientific consensus concerning brain maturation first emerged in the years following *Roper*. As is discussed further below, the handful of Tennessee death sentences for 18-year-olds were imposed in the 1980s and 1990s and have all been vacated except for Ms. Pike. It has been nearly three decades since the last time a death sentence was imposed on an 18-year-old.

Executing individuals barely old enough to vote, unable to drink legally or rent a car, unable to serve in Congress, and still in the process of cognitive development—based upon now-disregarded views of culpability—undermines the Supreme Court's commitment to dignity, and the possibility of rehabilitation and redemption.

Twenty-four jurisdictions have removed the death penalty as a possible punishment. Twenty-three states[20] plus the District of Columbia do not have the death penalty.[21] Eleven of these states have rejected capital punishment since *Roper*, in the past 19 years: New Jersey (2007), New York (2007), New Mexico (2009), Illinois (2011), Connecticut (2012), Maryland (2013); Delaware (2016), New Hampshire (2019), Colorado (2020), Virginia (2021), Washington (2023). Four additional jurisdictions have moratoria in place suspending use of the death penalty, several with

[20] Alaska, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

[21] The death penalty is also prohibited under the constitutions of Puerto Rico and the Commonwealth for the Northern Mariana Islands. See P.R. Const. Art. II § 7 ("The death penalty shall not exist."); C.N.M.I. Const. Art. I § 4(i) ("Capital punishment is prohibited."). In Guam and the U.S. Virgin Islands, the death penalty is not a possible sentence. *See, e.g.*, 9 G.C.A. § 16.39(b) (punishment for aggravated murder is life); 14 V.I. C. § 923(a) (providing for life in prison as punishment for murder).

a long history of disuse—California,[22] Pennsylvania,[23] Oregon,[24] and Arizona.[25]

Seven additional states have exhibited long-term disuse and have little or no prospect of executing 18-year-olds. Most of these jurisdictions have no individual on death row who was 18 years of age and have not in the modern era executed someone who was that young at the time of the offense. A small handful may have a single young person on death row, sentenced decades ago, reflecting the broad trend towards disuse, and the evolving consensus that executing 18- year-olds is excessive: 1) Wyoming has executed one person in the last 50 years (Mark Hopkinson in 1992) and has had no one on its death row since 2014, when the last death

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[22] *See* Office of the Governor Gavin Newsom, Governor Gavin Newsom Orders a Halt to the Death Penalty in California, March 13, 2019, *available at* https://www.gov.ca.gov/2019/03/13/governor-gavin-newsom-orders-a-halt-to-the-death-penalty- in-california/.

[23] *See* Governor Tom Wolf, Memorandum of Moratorium, February 13, 2015, available at https://www.scribd.com/doc/255668788/Death-Penalty-Moratorium-Declaration.

[24] *See* Governor John Kitzhaber, Executive Order, November 22, 2011, available at https://deathpenaltyinfo.org/gov-john-kitzhaber-oregon-declares-moratorium. Governor Kate Brown continued Gov. Kitzhaber's hold on executions and in 2022 commuted all death sentences of those on Oregon's death row. Governor Kate Brown has continued this moratorium.

[25] *See* Jacques Billeaud, Arizona governor won't proceed with execution set by court, Associated Press, March 3, 2023, available at https://apnews.com/article/execution-arizona-katie-hobbs-f0c799c2a269994474119bd38d5996a1 .

sentence (for a prisoner who was 43 at the time of the offense) was overturned. 2) Montana has two individuals on death row; one was 24 and one was 26 at the time of the offense. In the last 50 years, it has executed three people—all older than 30 at the time of the offense. 3) Kansas, as the *Hall* Court noted, "has not had an execution in almost five decades." *Hall*, 572 U.S. at 716. Kansas has nine people under sentence of death, but only one individual under the age of 21 at the time of the offense (Jonathan Carr, age 20). 4) Utah has eight people on death row, none under the age of 21. One of the seven people executed in Utah over the last 50 years was under 21 at the offense (William Andrews, age 19); however, his execution occurred over 30 years ago. 5) Idaho has executed only three people in the modern era. None was under the age of 21 years old at the time of his offense. Currently, Idaho has eight people on death row. Only James Hairston (age 19 at offense) was under 21 years old. His sentence was imposed nearly 30 years ago. 6) South Dakota has executed 5 persons in the modern era. It has one person remaining on its row, Briley Wayne Piper, who was 19 at the time of the offense. 7) Kentucky has executed three individuals since 1968. Each was well older than 20 at the time of the offense. Kentucky has 26 people on death row. Only two (Ronnie Lee Bowling and Karu Gene White) were under the age of 21 at the time of the offenses; both were 20 years old at the time of offense.

Even in jurisdictions that continue to execute and sentence individuals to death, there is a strong trend towards exempting young adults from execution. The broad trend is reflected in the aggregate numbers. As one court has found, "[o]f the 31 death penalty states, only about half continue to impose the penalty on a regular basis and in

these states, the number of death sentences has dropped greatly over the last decade. In 2015, there were 49 death sentences nationally. This number is down from a peak of 315 in 1996." *United States v. Fell*, 224 F. Supp. 3d 327, 350 (D. Vt. 2016). "The principal change over the course of the last 20 years has been a marked decrease in death sentences and executions." *Id.* In fact, in 2023 there were only 21 new death sentences imposed in the United States, by just 7 states.[26]

As the Fayette Circuit Court in Kentucky found when analyzing data regarding death sentencing for late adolescents:

> Of the thirty-one (31) states with a death penalty statute, only nine (9) executed defendants who were under the age of twenty-one (21) at the time of their offense between 2011 and 2016. Those nine (9) states have executed a total of thirty-three (33) defendants under the age of twenty-one (21) since 2011- nineteen (19) of which have been in Texas alone. Considering Texas an outlier, there have only been fourteen (14) executions of defendants under the age of twenty-one (21) between 2011 and 2016, compared to twenty-nine (29) executions in the years 2006 to 2011, and twenty-seven (27) executions in the years 2001 to 2006 (again, excluding Texas). In short, the number of executions of defendants under twenty- one (21) in the last five (5) years has been cut in half from the two (2) previous five- (5) year periods.

Commonwealth of Kentucky v. Bredhold, No. 14–CR–161, Order Declaring Kentucky's Death Penalty Statute as Unconstitutional

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[26] *See* Death Penalty Information Center, https://deathpenaltyinfo.org/facts-and-research/sentencing-data/death-sentences-by-year/2023-death-sentences-by-name-race-and-county (last visited July 10, 2024).

(Fayette Circuit Court, August 1, 2017) at 4 (holding unconstitutional the death penalty for persons under the age of 21, noting "[s]ince *Roper*, six (6) states have abolished the death penalty, making a total of nineteen (19) states and the District of Columbia without a death penalty statute"), *vacated on other grounds by Commonwealth v. Bredhold*, 599 S.W.3d 409 (Ky. 2020).[27] *See* Notice of Filing, Exhibit 11.

The overall trend in the states and the federal government reflects the on-the-ground consensus that executing individuals for what they have done at age 18 is excessive and inappropriately precludes the possibility of rehabilitation and redemption. *See Bredhold* Order, at 5 ("Contrary to the Commonwealth's assertion, it appears there is a very clear national consensus trending toward restricting the death penalty, especially in the case where defendants are eighteen (18) to twenty-one (21) years of age.").

Of even greater import in the Eighth Amendment/Article I, § 16

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[27] Travis Bredhold was 18 years and five months old when he allegedly robbed a gas station and fatally shot an employee. *Commonwealth v. Bredhold*, 599 S.W.3d 409, 412 (Ky. 2020). The Commonwealth gave notice that it intended to seek the death penalty. *Id.* at 413. His case was consolidated with two other late adolescent defendants, and all moved to exclude the death penalty as a sentencing option. *Id.* After conducting an evidentiary hearing, the Fayette County Circuit Court granted the motion after concluding that, given the national consensus and post-*Roper* recent scientific research, the death sentence was disproportionate for late adolescents. *Id.* The Kentucky Supreme Court vacated the trial court's orders, finding that the defendants did not face actual or imminent injury that could support standing for a constitutional challenge. *Id.* at 423.

analysis is Tennessee's practice with regard to execution of persons who were 18 years-old at the time of offense and female.

If the State proceeds with the requested execution of Ms. Pike,[28] she would be the only person Tennessee has executed in the modern era (post-*Furman*, issued in 1972) who was 18 years old at the time of offense. More than 3,100 people in Tennessee have been convicted of first degree homicide.[29] Of those thousands, only *eight* were 18 years old at the time of offense and death-sentenced.[30] Each of those death sentences predated Ms. Pike's, and all have had their death sentences vacated.[31]

Ms. Pike is the last 18-year-old offender to be sentenced to death. Thus, it has been three decades since Tennessee last death-sentenced an 18-year-old youthful offender. Tennessee prosecutors and/or juries appear to have embraced the clear scientific consensus, shared by Courts

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[28] On August 27, 2020, the Attorney General and Reporter filed a Motion to Set Execution Date. https://www.tncourts.gov/Christa_Gail_Pike (last visited July 10, 2024). Ms. Pike filed her Response on June 7, 2021. *Id.* Ms. Pike does not currently have an execution date.

[29] As referenced *supra*, the OPCD maintains a database of first degree murder cases containing the AOC Rule 12 and TDOC data, as well as data from criminal court files we have collected. The database submitted to the post-conviction current is current up to December 2022.

[30] The eight include seven men—David Duncan (1981), Tony Bobo (1983), David Poe (1986), Michael Dean Bush (1988), Roosevelt Bigbee (1989), Derrick Johnson (1990), and Frederick Sledge (1991)—and one woman, Christa Pike (1995).

[31] *See* Notice of Filing, Ex. 1, Appendix 4 (Affidavit of Alicia Gullo), at ¶¶15–17.

and professionals, that "no meaningful neurological bright line exists between age 17 and age 18...." *Matter of Monschke,* at 287.

If executed, Ms. Pike would also be the first woman executed by Tennessee in over 200 years.[32] Data collected by the OPCD identifies 200 women who have been convicted of, or pled guilty to, first degree murder in Tennessee since 1976. *See* Notice of Filing, Exhibit 1, Appendix 4, Affidavit of Alicia Gullo.[33] Of those, only Christa Pike is currently under a death sentence. *Id.* at Exhibit B (Code PHE1).

Of the 200 women found guilty of first degree murder, the State sought the death penalty for only 19. *See Id.*, at ¶6. Six of those death

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[32] Only three women have been executed in the State of Tennessee, ever. All three were executed between 1807–1819. *See* Facts Relevant to the Questions Presented, C. The execution of Christa Pike would be an extreme statistical outlier, n.3.

[33] As of August 23, 2023, the online Rule 12 Database maintained by the AOC listed 121 women who have been convicted of or pled guilty to first degree murder. Of those, five are men incorrectly listed as women—Darrin L. Walker, Darius Lamon Mack, Darnell Hubbard, Michael Lambdin, and Oscar Franklin Smith. *See* Notice of Filing, Ex. 1, Appendix 4, Affidavit of Alicia Gullo, at ¶¶8–12. So, the accurate count is 116 women. *Id.* at ¶12. The AOC also maintains a database of all first-degree murder convictions in Tennessee with data obtained from the Tennessee Department of Correction. The Office of the Post-Conviction Defender ("OPCD") has obtained copies of that data and entered it into the OPCD Rule 12 Database. *Id.* at ¶13. In addition, the OPCD collects first degree murder data by requesting the criminal court files in all cases we can identify, including those from the TDOC data. *Id.* This combined data set contains an additional 84 women who were convicted of or pled guilty to first degree murder for whom Rule 12 reports have either not been completed or for whom completed forms have not been filed. *Id.*

notices were subsequently withdrawn. *Id.* Only two of those cases have resulted in a death sentence—Ms. Pike and Gaile Owens. *Id.* Ms. Owens' sentence was commuted to life in 2010,[34] and she was later released on parole.[35] There have been no other sustained death sentences for women in Tennessee since the end of slavery.

Further, Ms. Pike's death sentence for the killing of a single victim is disproportionate to the sentences of women who killed more than one victim. Of the 200 women first degree murder offenders, there are 23 women in the database who were convicted of killing more than one victim. *See Id.,* Appendix 4, Exhibit B (Codes CCA2 and CCA3). Seventeen of the women killed two victims and six killed at least three victims. *Id*. (Codes CCA2 and CCA3 respectively). Of the 23 women who killed more than one victim, four are serving life without parole sentences and 19 are serving life sentences. *Id.* (Codes PHE2 and PHE3 respectively).

Finally, the number of death sentences per year in Tennessee is dramatically decreasing.[36] In the last decade, only six people have been

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[34] *See* Notice of Filing, Ex. 1, Appendix 5, Owens Commutation Certificate (July 14, 2010).

[35] https://www.tennessean.com/story/news/local/2019/12/04/gaile-owens-obituary-tennessee-death-row-commuted-sentence/2587659001/ (last visited July 10, 2024).

[36] There are currently 44 men and one woman on Tennessee's death row. *See* Tennessee Department of Correction death row facts https://www.tn.gov/correction/statistics/death-row-facts.html

death-sentenced and those men's ages at the time of offense range from 26 to 39 years old.[37] Recently, Tennessee's justice system demonstrated that life imprisonment, and not death, is a just sentence for the mass killing of eight people, including a child. The District Attorney for the 18th Judicial District chose to negotiate a life imprisonment without possibility of parole for Michael Cummins after brain scans

(last visited July 10, 2024). The youngest, Urshawn Miller, is the second most recent arrival and is 35 years old. *Id.*

[37] Rickey Bell was sentenced in 2012 for a crime committed when he was 30 years old. He is no longer on death row after a negotiated disposition for life in prison without possibility of parole between the Office of the Post-Conviction Defender and District Attorney General for the 25th Judicial District. *See Rickey Alvis Bell, Jr. v. State*, Tipton County Case No. 6664 (May 24, 2021); Appendix 4, at ¶18. Sedrick Clayton was sentenced in 2014 for homicides he committed at age 28. *State v. Clayton*, 535 S.W.3d 829 (Tenn. 2017); Appendix 4, at ¶19. Henry Lee Jones was sentenced to death in 2015 in a retrial after his first Tennessee death sentence was overturned. *State v. Jones*, 568 S.W.3d 101 (Tenn. 2019). He was 39 at the time of the crime and is also currently sentenced to death in Florida. Appendix 4, at ¶19. Michael Dale Rimmer was sentenced to death in 2016 in a retrial after his sentence was vacated by the post-conviction court. *State v. Rimmer*, 623 S.W.3d 235 (Tenn. 2021). He was 30 at the time of the crime. Appendix 4, at ¶19. Urshawn Miller was sentenced in 2018 for a crime committed when he was 26 years old. *State v. Miller*, 638 S.W.3d 136 (Tenn. 2021); Appendix 4, at¶19. Steven Wiggins was sentenced in 2021 for a crime committed when he was 31 years old. *See* https://www.newschannel5.com/news/steven-wiggins-taken-into-custody (last visited July 10, 2024); Appendix 4, at ¶19.

demonstrated that he had significant mental problems.[38] Ms. Pike similarly suffered brain damage in utero which was visible in an MRI brain scan.[39]

There is no scientific justification for a drastic differentiation in punishment between a 17-year-old offender and an 18-year-old offender, as in the case of Tadaryl Shipp and Christa Pike. Nevertheless, Mr. Shipp, who was equally responsible for the murder, will be eligible for release in less than two years. By any measure, Ms. Pike's death sentence is out of step with other first degree murder sentences. Not only the current scientific and societal consensus regarding the relative culpability of 18-year-olds, but also the reality of Tennessee capital sentencing in the last half century, reflects that execution of a death sentence in Ms. Pike's case violates the Eighth Amendment, Article I, § 16 of the Tennessee Constitution, and the *Booker* requirement that her sentence be proportionate.

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[38] *See* DPIC, https://deathpenaltyinfo.org/news/brain-scans-of-tennessee-man-who-admits-to-killing-eight-convince-prosecutors-to-drop-death-penalty (last visited July 10, 2024).

[39] Ms. Pike's mother drank during pregnancy, which caused brain damage in utero to Christa's frontal lobe, the region in the brain that controls executive functioning and behavioral regulation. (PC VIII: 242–243, 248–249; PC XXIX: 49–50, 55.) Her brain damage is so severe that—unlike most damage of a similar nature—it is visible on an MRI. (PC VIII: 244–45.) Dr. Jonathan Pincus, a well-respected neurologist and clinical psychiatrist, confirmed Ms. Pike's brain damage at her post-conviction hearing. (PC VIII: 248–49; PC XXIX: 49–50.) Such brain damage increases the likelihood of developing bipolar disorder (PC XXIX: 49–50.)

D. MS. PIKE IS ENTITLED TO RELIEF EVEN IF THIS COURT DOES NOT CONSIDER *BOOKER*.

Should this Court find that the new constitutional rule announced in *Booker* does not squarely apply, Ms. Pike nonetheless may proceed in this Motion to Reopen to challenge the constitutionality of her death sentence.[40] This Court has emphasized the importance of "evolving standards of decency that mark the progress of a maturing society both nationally and in the State of Tennessee." *Van Tran v. State*, 66 S.W.3d 790, 805 (Tenn. 2001); *State v. Pruitt*, 415 S.W.3d 180, 211 (Tenn. 2013) ("The United States Supreme Court has recognized that as our society matures, our standards of decency evolve as well.").

This Court decided *Van Tran*—an issue of first impression—in the context of a motion to reopen in a procedural posture strikingly similar to Ms. Pike's. Mr. Van Tran filed a post-conviction petition in 1995 seeking relief under Tenn. Code Ann. § 39–13–203 (1991). *Van Tran v. State*, 66 S.W.3d 790, 793 (Tenn. 2001). After an evidentiary hearing, the post-conviction court dismissed the petition. *Id.* Mr. Van Tran then filed a motion to reopen his post-conviction petition in 1999, relying on updated IQ testing. *Id.* at 794. The trial court issued a preliminary order denying the motion to reopen and the Court of Criminal Appeals denied petitioner's application for permission to appeal. *Id.*

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[40] As stated *supra*, the Court of Criminal Appeals incorrectly found that this issue was not before the post-conviction court and could not serve as a basis of a motion to reopen. *See* Notice of Filing, Exhibit 10, at p. 3. This issue was clearly presented to the post-conviction court. *See* Notice of Filing, Exhibit 1, at p. 16–21; Exhibit 9, at p. 5–9.

This Court granted permission to appeal and, following oral argument, entered a unanimous order directing the parties to file supplemental briefs addressing an issue of first impression for this Court: "whether the Eighth Amendment to the United States Constitution or article I, § 16 of the Tennessee Constitution prohibits executing a mentally retarded defendant." *Id.* At the time, the United States Supreme Court found no Eighth Amendment bar to executing persons with intellectual disabilities. *See Penry v. Lynaugh,* 492 U.S. 302 (1989).

This Court noted that "irrespective of whether the United States Supreme Court adheres to or overrules *Penry,* it is axiomatic that this Court may extend greater protection under the Tennessee Constitution than is provided by the United States Supreme Court's interpretations of the federal constitution." *Id.* at 801. The Court explored evolving standards of decency nationally and within Tennessee, looking at societal consensus and conducting a proportionality analysis under the Eighth Amendment and Article I, § 16 of the Tennessee Constitution. *Id.* at 801–08. The Court framed the issue in *Van Tran* as whether the punishment of intellectual disabled persons "may extend beyond life imprisonment without parole and include the extreme and maximum penalty of death under article I, § 16 of the Tennessee Constitution." *Id.* at 807.

The Court found that "any penological objectives attained through the execution of" persons with intellectual disability "are minimal at best and insufficient for the purpose of our analysis under article I, § 16." *Id.*

at 809.[41] Finally, the Court noted that it has commonly recognized that "a sentence of death is final, irrevocable, and 'qualitatively different' than any other form or level of punishment." *Id.*

As this Court has noted, "objective indicia" of society's standards or values are expressed through a state's practice regarding executions. *State v. Pruitt*, 415 S.W.3d at 211 (citing *Kennedy v. Louisiana*, 554 U.S. 407 (2008)).[42] In her Motion to Reopen, Ms. Pike provided data establishing that the State of Tennessee has never executed anyone who was 18 years old at the time of the offense in the modern era. *See* Notice of Filing, Exhibit 1, at p. 19–20. Over 3,100 individuals in Tennessee have been convicted of first degree homicide in the modern area and only eight 18- year-old offenders were sentenced to death. *Id.*, at p. 19. The other 18-year-old offenders' death sentences all predated Ms. Pike's crime, and all have had their death sentences vacated. *Id.*, at p. 20. No other 18-

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[41] In *Booker*, this Court held that life a sentence imposed on juveniles is not supported by sufficient penological objectives. *Booker*, 656 S.W.3d at 65. "These objectives are generally considered to be retribution, deterrence, preventing crime through incarceration, and rehabilitation." *Id.* (citing *Miller*). "Retribution is tied to an offender's culpability and blameworthiness. Thus, the reason for retribution is reduced with a juvenile compared to an adult because of the juvenile's reduced culpability." *Id.* Similarly, under the current post-*Roper* science, the penological objective of retribution is reduced by the reduced culpability of 18-year-olds. The notion that an individual who is 17 years and 364 days old cannot be subject to imprisonment for life without possible parole, but an 18-year-old can be subject to execution of a death sentence is contrary to science and to current standards of decency.

[42] The *Kennedy* Court cited *Roper v. Simmons*, 543 U.S. 551, 563 (2005) in which the Court cited *Atkins v. Virginia*, 536 U.S. 304, 316 (2002).

year-old offender has been death-sentenced since 1995. *Id.* Ms. Pike also provided supporting data establishing that the State of Tennessee has not executed a woman in over 200 years. *See* Notice of Filing, Exhibit 1, at p. 18.

Ms. Pike is prepared to present testimony and evidence at the evidentiary hearing in support of these arguments. As was the case in *Van Tran*, this is the first opportunity for Ms. Pike to present her constitutional ineligibility for execution to the Court. For the same reasons, the Eighth Amendment and Article I, § 16 of the Tennessee Constitution require that her fundamental rights be subject to heightened protection. As this Court concluded in *Howell*, "if an excessively lengthy sentence [in violation of the Eighth Amendment and Article I, § 16] implicates a fundamental right, as in *Burford*, **then certainly a death sentence would as well**." *Howell*, 151 S.W.3d at 462 (emphasis added).

CONCLUSION

WHEREFORE, Petitioner Christa Gail Pike, respectfully requests the Court to:

(1) grant Ms. Pike's Application for Permission to Appeal the Court of Criminal Appeals decision denying appellate review;

(2) reverse the Knox County Criminal Court's denial and dismissal of Ms. Pike's Motion to Reopen; and

(3) remand this matter to the Knox County Criminal Court for the entry a colorable claim order in accordance with Tenn. S. Ct. R. 28, § 6(B)(3) and an evidentiary hearing; or, in the alternative,

(4) issue an opinion and order vacating Ms. Pike's death sentence and imposing a sentence of life or life without the possibility of parole.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Kelly A. Gleason, counsel for Ms. Christa Pike, hereby certify pursuant to the Tennessee Rules of Appellate Procedure, Rule 11(b), and Rule 30(e), that the number of words contained in the foregoing brief is 12,703. This word count does not include the words contained in the title page, table of contents, certificate of compliance, and certificate of service. This word count is based upon the word processing system used to prepare this brief.

/s/ Kelly A. Gleason
Kelly A. Gleason, BPR #022615
Assistant Post-Conviction Defender

CERTIFICATE OF SERVICE

I hereby certify that service of this pleading was rendered through the electronic filing system and/or email to Edwin Alan Groves, Jr., Assistant Attorney General, Criminal Appeals Division, Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202-0207, Alan.Groves@ag.tn.gov, on this the 16th day of July, 2024.

/s/ Kelly A. Gleason
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